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A PREHISTORY OF THE MODERN LEGAL PROFESSION IN EGYPT, 1840S–1870S

Abstract
This article examines the emergence of a new corps of legal practitioners in Egypt during the 1860s and early 1870s. The proceedings of hundreds of merchant court cases in mid-19th-century Cairo are replete with references to deputies and agents (*wukalā*; sing. *wakīl*) who represented merchant-litigants in a wide range of commercial disputes. Examining how these historical actors understood Egyptian, Ottoman, and French laws, and how they strategically deployed their knowledge in the merchant courts, this article revises the commonly accepted historical account of the founding of the legal profession in Egypt. Specifically, it argues that norms of legal practice hitherto linked to the establishment of the Mixed Courts in 1876 were already being formed and refined within the realm of commercial law as part of a more comprehensive program of legal reforms underway during the middle decades of the 19th century. In uncovering this genealogy of practice, the article reevaluates the extent to which the khedival state shared a legal culture with the Ottoman center, and, simultaneously, created the space for a new form of legal representation that became ubiquitous under British, and, subsequently, postcolonial rule.

Keywords: Egypt; extraterritoriality; lawyers; merchants; professionalization

On the morning of 24 December 1873, Hasan al-Shirbini, a cloth dyer and merchant, was summoned to the merchant court (*majlis al-tujjār*) of Cairo. He had borrowed a sum of money from another Cairo-based merchant, Muhammad Shumays, and signed a note (*sanad*) in which he promised to pay back the loan earlier that month. After hearing both sides, the court declared Hasan bankrupt and authorized his creditor, Muhammad, to coordinate with other potential creditors to liquidate Hasan's assets. Hasan had known that there would be consequences for failing to pay his debt but likely he did not expect such a severe ruling. Shortly afterwards, Muhammad sold Hasan's store, equipment, and goods, such as the indigo so crucial for his business. To make things worse for Hasan, he was jailed on suspicion of fraud.

Hasan and Muhammad would continue this legal contest over the following nine months. Interestingly, however, they would choose to do so indirectly, through agents, referred to in the archival record as *wakīl*s. Speaking legalese, the *wakīl*s cited specific legal articles, and forged arguments that may not have been immediately obvious to their clients. During the last round of litigation, on 1 September 1874, Hasan's *wakīl*,

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Khawaja Caritato, demanded that his client be compensated not only for the material dispossession that resulted from the case but also for his injured reputation. He based his demands on "Articles 1382 and 1383 of the French Law [*sic*]." In response, Muhammad's *wakīl*, Khawaja Dimitri ʿAbduh, rather than contesting the authority of "French Law," insisted that his client had acted within the court's authorization to him and was therefore not responsible for any intangible costs that the defendant had incurred. Ultimately, the merchant court ruled that Hasan had the right to regain his seized possessions but confirmed his state of bankruptcy. He was still required to pay his debt to Muhammad.[1]

The court's decision aside, the case raises several significant questions about the nature and extent of legal counsel. For example, how were Caritato and Dimitri related to the original disputants? Were they their respective business associates or, alternatively, private attorneys who could potentially be hired to represent anyone? To what extent was the deployment of codified legal articles, French or otherwise, common in 19th-century Egypt's courtrooms? And, what can commercial disputes such as this one teach us about the state of legal practice more generally on the eve of the establishment of the Mixed Courts (al-Mahakim al-Mukhtalata) in 1876 and the National Courts (al-Mahakim al-Ahliyya) in 1883?

This article aims to identify and explain the first sustained experience of modern legal practice in 19th-century Egypt. In doing so, it revises the conventional wisdom in historical scholarship that the origins of the Egyptian modern legal profession coincided with the establishment of the Mixed and National Courts in 1876 and 1883 respectively. Instead, the article shows that a new corps of legal practitioners familiar with French, Ottoman, and Egyptian legal codes, and mindful of the distinctions between procedural and substantive law had become increasingly active in the merchant courts of Cairo and Alexandria as early as the 1860s. Although there is no evidence that these legal practitioners shared a similar education or organized themselves into professional associations, a close and systematic reading of the archival record reveals that they shared a common understanding of legal texts and practices. Consequently, the new genealogy presented in the following pages places the formative phase of modern legal practice within the modern state-building efforts during Egypt's khedival period specifically, and late Ottoman reforms more generally. Thus, this article amends the long assumed but empirically unsound link between the creation of the modern legal profession and (semi-)colonial British rule in Egypt. The professionalization of legal practice during the last quarter of the 19th century did not mark the demise of the khedival legal regime. On the contrary, the legal profession occupied a space within the legal regime that had already been carved out by khedival state policies, and *wakīl*-initiated practices.

The following investigation of the formative phase of the modern legal profession in Egypt is divided into three complementary sections. The first section explores how the history of the legal profession has been hitherto written. It argues that the first historians of the profession, lawyers themselves, chose to dismiss all legal practice before the establishment of the Mixed Courts in order to legitimate their own legal authority at the turn of the 20th century. The following section explains the different kinds of legal representation in the merchant courts, and considers how the resultant diversity of practice may have prevented scholars from identifying a new cohort of practitioners of law that was being formed in the mid-19th century. The final section identifies the merchant courts of

Cairo and Alexandria (1844/45–76) as the first sites within the state-enacted network of judicial forums to facilitate a particular kind of legal representation based on advocacy, which came to be associated with the Mixed and National Courts after 1876.

WHO IS A LAWYER?

The history of modern law in Egypt is commonly reduced to that of two judicial bodies: the Mixed Courts (1876–1949) and the National Courts (1883–present). The Mixed Courts enjoyed jurisdiction over all "litigation which involves foreign interest."[2] Judges from various European countries, in addition to the United States, presided over the Mixed Courts, and applied its legal code, which was a synthesis of several continental European laws. The National Courts, on the other hand, were established shortly after the 1882 British occupation of Egypt as a comprehensive multitiered judicial system that adjudicated cases involving subjects of the local government. After the termination of the Mixed Courts in 1949, the National Courts came to enjoy universal jurisdiction over all persons in Egypt, thus giving way to the contemporary Egyptian judiciary.[3]

Historians cite two reasons for considering these two institutions the first modern judicial bodies in Egypt. First, they were theoretically independent from other branches of government. Thus, they conformed to the liberal ideal of the separation of judicial powers from legislative and executive powers.[4] Second, they adopted legislations that resembled, or were derived from, contemporary European codes of law. It is worth noting that even scholars who acknowledged the significance of 19th-century judicial reforms continued to overlook the active participation of legal practitioners in sustaining the functions of those state-enacted judicial bodies.[5]

The most obvious reason for not considering pre-1876 legal practice as relevant to the history of modern law in Egypt may be the absence of the formal markers of professionalism, namely, "institutionalization" and "common credentials."[6] Because bar associations[7] and specialized law training[8] were only established in Egypt in or after 1876, it is understandable that historians searching for the origins of the legal profession took that year as their starting point. The fact that the Ottoman center had adopted a law to organize the legal profession, and that a provision in the Hanafi law-based Civil Code, the *Mecelle*, "instructed. . . judge[s] to appoint an ad hoc attorney" to nonattending defendants lent further support to the impression that modern lawyering had become a possibility only in the mid-1870s.[9] By extension, when the archival record presented historians with instances of legal representation, they dismissed them as necessarily unprofessional aberrations. This attitude is exemplified in the scholarly treatment of the figure of the *wakīl*. As I will show in the remainder of this article, *wakīl*s had been performing a range of lawyerly tasks for over a decade before the formal institutionalization of the legal profession. Moreover, they executed these tasks in similar, if not identical ways, to those of post-1876 lawyers, who shunned the title *wakīl* and replaced it with the new designations *muḥāmī* and *avūkātū* (Italian: *avvocato*).

Adopting new professional titles was consistent with the emergence of a new semantic field in Egypt during the last decades of the long nineteenth century. Yoav Di-Capua notes that inventing fixed meanings for hitherto multilayered words was a critical means towards disassociation from the Ottoman realm, and participating in modern political action on a national scale.[10] To relate this process to the field of law, let us turn to the

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two most influential authors who laid the foundation of the authoritative narrative of the development of the legal profession: Ahmad Fathi Zaghlul (1863–1914) and ʿAziz Khanki (1873–1956). Both were law degree holders and practicing lawyers who were interested in documenting the history of their own profession. Born to a landowning family, Zaghlul traveled to France at the age of twenty to study law and returned four years later with a *licence en droit* to join the staff of the newly established National Courts. In 1900, he published his book on the history of the legal profession in Egypt, *al-Muhamah* (The Legal Profession), which continues to hold a canonical status among legal historians today. Notably, Zaghlul was also an admirer of ideas of racial and civilizational hierarchy, translating into Arabic Edmond Demolins' *À quoi tient la supériorité des Anglo-Saxons?* (*Anglo-Saxon Superiority: To What It Is Due*) and Gustav Le Bon's *Les lois psychologiques de l'évolution des peoples* (*The Psychology of the Peoples*).[11] ʿAziz Khanki, the other main contributor to this dominant narrative, had a comparable professional background. He graduated from the Egyptian Law School, worked as a lawyer, and was an enthusiastic campaigner for the establishment of the National Bar Association in 1912. Khanki documented the history of the judiciary and the legal profession in several books such as *al-Muhamah Qadiman wa Hadithan* (The Legal Profession in the Past and the Present) and *al-Tashriʿ wa-l-Qadaʾ Qabl Inshaʾ al-Mahakim al-Ahliyya* (Legislation and the Administration of Justice Before the Establishment of the National Courts).[12] Living to see the crumbling of the Ottoman Empire, he wrote glowingly about republican Turkey, comparing Ataturk to the leaders of the French Revolution and praising him for successfully transforming Turkey "from an autocracy to a democracy . . . from a religious [regime] to a civil [one]. From divine law to positive law."[13]

Zaghlul and Khanki prided themselves on belonging to the earliest cohorts of law school graduates who dominated the court system in 20th-century Egypt. Their subscription to ideas of historical linearity and societal evolution contributed to their sense of pride. The historical accounts they authored were self-congratulatory, stressing the position of their generation as the pioneers of the modern legal profession. This worldview is best reflected in Zaghlul's dedication of about a quarter of his *al-Muhamah* to a comparative discussion of the legal profession "in Western nations."[14] And, while he realized the shallow roots of this profession in parts of Europe such as Switzerland and Turkey, he still found the contrast significant with "the Eastern nations," where the legal profession enjoyed less prominence and respect. Zaghlul argued that "the degree of civilization and the strength of abiding by the law" accounted for this difference.[15] Accordingly, establishing a corps of lawyers who matched the levels of technical training and professionalism of their European counterparts constituted a significant professional advancement and closed a civilizational gap.

Zaghlul's influential historical account of the legal profession was based on original research in the Egyptian State Archive (al-Daftarkhana al-Misriyya), which he conducted in 1899.[16] In his book, *al-Muhamah*, he constructed a detailed account of the administrative structure of the 19th-century judicial system. One of his main findings was that "lawyers" did not exist before 1876. Instead, individuals who claimed to have legal expertise but whose services hardly resembled those of professional lawyers populated the judicial system.[17] He therefore concluded that a complete rupture existed between his generation of modern lawyers and their "unprofessional" predecessors.

Surprisingly, Zaghlul's argument remains largely accepted. Contemporary historians revised only the conventional wisdom about post-1876 legal history. In effect, they unwittingly accepted Zaghlul and Khanki's claim that the mid-19th century judiciary was unable, for systemic reasons, to introduce the legal profession "as we know it."[18] Even historians who conducted archival research did not consult pre-1876 collections. To mention one example, Latifa Salim's widely cited *al-Nizam al-Qadaʾi al-Misri al-Hadith* (The Modern Egyptian Judicial System) did not consult any archival collections predating the establishment of the Mixed Courts, except for a small number of published state ordinances regarding judicial organization. In fact, her discussion of the mid-19th century relies entirely on British colonial records and Egyptian 20th-century sources, where Zaghlul and Khanki's influence features prominently.[19]

In writing the history of the legal profession, scholars did not consider practical credentials such as the ability to synthesize complex legal arguments or to resort to legal exegeses to interpret the letter of the law. Rather, they agreed on three formal qualifications that distinguished lawyers historically. The first formal qualification was graduation from a specialized law school. It took a full decade after the establishment of the National Courts in 1883 for this condition to be fulfilled universally. Initially, the courts were more concerned with defining the powers of lawyers than with defining their qualifications. Ultimately, two Advocates Laws were issued, the first in 1888 and the second in 1893. The latter stipulated that a full member of the profession had to earn a law degree either from the Khedival Law School or from a comparable foreign law school.[20] The second formal qualification was organization in an independent professional organization. Initially, the Mixed Bar Association, which consisted of European lawyers who practiced before the Mixed Courts, was established in 1876. A national bar association was created only in 1912. Attached to the law that established it was a memorandum that explained the logic behind the association.

> Most *wukalā al-daʿāwā* at the time of the . . . 1893 Advocates Law did not fulfill the legal qualifications that the law specified for prospective lawyers. Therefore, lawyers were placed under the guardianship [*riqāba*] of the judiciary. Now, most of them have studied law [*al-qawānīn wa-l-sharāʾiʿ*] thoroughly. For that reason, it is in the interest of the legal profession itself to grant them a measure of independence.[21]

In addition to their educational credentials and bar association membership, lawyers were expected to practice their profession on a full-time basis, to the exclusion of any other (supplementary) vocation. This particular criterion of the "modern" lawyer was intended to eliminate the possibility of a conflict of interest. For example, a lawyer who is also a government employee might not be in a position to represent a client who is suing the government. It was also meant to promote the reputation of the profession through distinguishing definitively between legitimate professionals and nonprofessional practitioners. Hence, Zaghlul explains, lawyers were instructed not to mix socially with brokers and merchants whose occupations were inherently exploitative.[22]

Thus, pre-1876 legal practitioners emerged as the inverse image of the aforementioned lawyer in all three domains: education, association, and reputation. Zaghlul stresses the abysmal state of their legal knowledge:

Anyone who found in himself the audacity . . . to list sentences and amass words that resembled lawyers' talk [*yamīl ila al-muḥāmāh*] opened an office and represented clients. A small number of them knew a few . . . laws, which they used to fill their written statements regardless of their relevance [to the case] [*aṣāb bihā al-gharaḍ aw akhṭaʾahu*]. Generally, they were completely ignorant of the Arabic language and employed a writing style that would not occur to anyone who works in the field of law nowadays.[23]

Furthermore, "they were not a distinguished clique, had no distinguished qualities and followed no law."[24] Even *wakīl*s who practiced before merchant courts, and who, according to Zaghlul, came closest to resembling modern lawyers, were nothing more than an arrested development because these courts did not set satisfactory standards for legal representation. Hence, when presented with the opportunity to join the ranks of modern lawyers, those *wakīl*s failed to make use of it.[25] Their lack of association could be linked to their third major failing: reputation. An anecdote that supported this claim is attributed to Ibrahim al-Hilbawi (1858–1940), the first president of the National Bar Association and a contemporary of Zaghlul and Khanki. In 1887, al-Hilbawi proposed to a Circassian concubine at the khedival palace. Her peers were confused about what a lawyer did for a living. To satisfy their curiosity their officer explained to them that a lawyer was a "forger and a swindler."[26]

An effective revision of this dominant narrative should address its fundamental flaws. As it stands, this narrative relies disproportionately on top-down sources, such as ordinances that reflected the state's normative plans for organizing the judiciary but contained little or no information on legal practice. In addition, it adopted a rigid definition of the legal profession with the intention of distinguishing "real" lawyers from imposters. This definition suited well the goals of the first wave of historians, who were also proud members of the new institutionalized legal profession.[27] In response, this article provides an alternative narrative based primarily on reconstructing legal practice. As such, its findings are centered on the content of historical legal arguments and procedures rather than their compliance with forms of professional organization.[28]

The focus on legal practice is partly a function of our limited knowledge about pre-1876 *wakīl*s. Although Court proceedings record their names, there is sparse information about their educational and career trajectories. A notable exception is Tito Figari, who is known to us because he joined an education mission to France that the khedival government organized in 1855. Such missions had started under Egypt's powerful Ottoman governor Mehmed Ali (r. 1805–48) in 1818, and continued under his successors throughout the 19th century, with the purpose of supplying the khedival government with highly qualified technical and administrative cadres. The son of an Italian resident in Egypt, Figari joined the 1855 mission to study law in France, but unlike most of his colleagues who assumed government positions upon their return to Egypt, he pursued a career as a *wakīl* starting in the early 1860s.[29] Inside Egypt, the study of "European legal subjects" was available as early as 1836 through the School of Languages and Translation, although it "remained a purely academic exercise" until the 1870s.[30] Still, in addition to official educational channels, prospective *wakīl*s had access to modern legal texts, most importantly the Napoleonic Code, which was translated by Rifaʿa al-Tahtawi and a cohort of his students in the mid-1860s.[31] While the Code constituted civil, rather than commercial law, it contained a number of universally applicable legal

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principles. For example, it prohibited the retroactive application of law, and compelled judges to adjudicate cases solely on the basis of the legal code, regardless of any perceived insufficiency. Moreover, the Napoleonic Code originally included rules of civil procedure, which were brought up occasionally in merchant court proceedings. Additionally, because legal representation was allowed in both the merchant courts and the European consular courts, legal practitioners moving back and forth between these two court networks contributed to the dissemination of legal knowledge and norms.[32]

LEGAL LANGUAGE INSIDE THE COURTROOM

Until the 19th century, a vast network of shariʿa courts constituted the core of the Ottoman judicial landscape, including Egypt. The courts adjudicated private legal disputes according to shariʿa methods and, when appropriate, to sultanic law (*qānūn*). Complementary to this network were non-Muslim communal courts that could hear cases in which the disputants were coreligionists,[33] and European consular courts that ruled on cases in which at least the defendant was a European. Legal representation was not unknown in this legal regime although, in line with the dominant opinion in Hanafi law, a representative had to be approved by the disputants, and even then his mandate was limited to deputizing and interpreting, rather than advocacy.[34] One function of multilingual dragomans was to participate in Ottoman court sessions where consular subjects were involved.[35] Business agents, also known as *wakīl*s, registered trade deals on behalf of their employers.[36]

The Ottoman legal regime underwent an extensive process of reconfiguration starting in the 1830s, with the introduction and elaboration of new, multitiered judicial forums that applied new legal codes, and the simultaneous confinement of shariʿa court jurisdiction to issues of personal status. Significantly, these legal developments would follow independent albeit parallel trajectories in Istanbul and Cairo. Whereas the Ottoman center issued new penal, civil, and commercial codes, which were largely derived from their Napoleonic equivalents, the Cairo-based khedives adopted those Ottoman codes only in conjunction with their own Egypt-specific edicts. Furthermore, independent of the Ottoman Nizamiye court system, they established a network of state-organized judicial councils (*majālis al-siyāsa*).[37] The merchant courts (*majālis al-tujjār*) were one specialized branch of these councils.

A main impetus behind creating the merchant courts was to allow European creditors to legally collect outstanding debts with local merchants.[38] Therefore, the courts were presided over by an equal number of local and European merchants, and they deployed a mixture of French, Ottoman, and khedival state laws. Most importantly for our purposes, they were the only judicial bodies that explicitly authorized legal counsel before 1876. The merchant courts' first statute, issued in 1845, stated that the plaintiff and the defendant must be present in person during the court session. "It is not allowed for either one [of the litigants] to have someone else represent them unless their absence was permissible according to established norms [*al-aʿdhār allatī tuqbal bi-muqtaḍā al-uṣūl*]."[39] Although not specified in the statute, examining actual court cases suggests that travel and physical disability were the only acceptable excuses. A later round of reorganization in 1857 erased this condition altogether. From that date onward, "[when] dealing with claims in the merchant court, lawyers [*avūkātiyya*, sing. *avūkātū*] are not permitted to

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enter [the courtroom]. The litigants submit their [written] claims in person or via a *wakīl* who holds a [written] authorization [*sanad tawkīl*].”[40] In 1864, a new statute was issued. It reiterated the requirement that a *wakīl* must hold a written authorization but gave litigants and their *wakīl*s the right to participate in court hearings. In addition, it renewed the ban on *avūkātū*s while confirming the legality of *wakīl* representation.[41]

Evidently, then, legal counsel was allowed for over a decade before the establishment of the Mixed Courts. However, beyond this general statement, what legal practice entailed seems elusive. Why was a certain kind of legal practitioner, the *wakīl*, allowed, and another, the *avūkātū*, excluded? What is the difference between these two occupations? If formal job titles are ambiguous, can the historian locate this difference through examining legal practices?

One way to begin answering these questions is to establish why a lawyer, in our case, the *avūkātū*, was banned from participating in the merchant courts. It is obvious at this point that the absence of lawyers from court records does not mean that they did not exist, as multiple explicit mentions of lawyers in merchant court statutes since the late 1850s prove. The most plausible explanation lies in a similar ban on lawyers in the 18th-century merchant court of Paris. In *A Revolution in Commerce*, Amalia Kessler describes the merchant court’s “existential dilemma.” The court was founded on the premise that resolving disputes between individual merchants was conditional upon establishing good faith between the disputants. These resolutions would restore harmony among merchants. At the same time, the merchant court’s existence attested to the prevalence of intermerchant disputes. As a result, its function amounted to an admission of the necessity of policing merchants. In order to reconcile this fundamental contradiction in its raison d’être, the court adopted internal regulations that paid due regard to the ideal of merchant fraternity, while simultaneously acknowledging the need to police their actions.[42] Chief among these regulations was the decision to do without lawyers. According to this logic, “merchant litigants, required to argue on their own behalf, would be forced to speak the simple truth, instead of relying on lawyers to couch their claims in complex legal fictions and technicalities.”[43] This logic survived into the 19th century, contributing to French legal debates, which in turn became part of contemporaneous Ottoman legal reforms.

It is conceivable that the origins of this ban on lawyers lay outside the immediate experience of 19th-century merchant courts in Egypt. The purposeful rejection of *avūkātū*s in the courts’ statutes was the legacy of French-inspired legal reformers who were familiar with the vocation of lawyers but who wished to avoid lawyers’ potentially harmful knowledge. In fact, despite the explicit ban on *avūkātū*s, a few actually appear in the proceedings of merchant court cases. These rare occurrences have added to the confusion, leading at least one historian to conclude that courts were lax in enforcing their own rules, and that foreign merchants enjoyed undue influence over the court due to their possession of extraterritorial privileges. Abusing these rights, the argument goes, foreign merchants disregarded the court’s regulations and hired lawyers to represent them. Forced to recognize the foreigners’ special legal status, the court had no choice but to allow this transgression.[44]

A closer examination of what might have seemed initially an inconsistency in upholding the courts’ rules provides a revealing insight into the history of legal practice. The case was brought to court by Philip De Casera *al-avūkātū*, who was suing Shaykh Hasanayn

Hamza for not paying him his dues after he represented him before the court in an earlier case. Philip's self-designation as an *avūkātū* is critical. An *avūkātū* was not allowed to practice law in this capacity before the merchant courts. Yet there was no law that prevented an *avūkātū* from suing others in his personal capacity. De Casera was a legal practitioner who represented various litigants before the merchant court during the early 1870s. For example, on 6 February 1874, several months before he sued Hamza, De Casera had represented a group of Manchester merchants in their case against a certain Joseph Juzil, a subject of the Egyptian government.[45] On 21 January 1876, a year after his dispute with Hamza, De Casera represented two local merchants, ʿAbduh Niʿma and Jirjis Niqula, in a case made against them by Jirjis Yusuf.[46] In these cases and others,[47] De Casera always presented himself to the merchant court as a *wakīl*, not as an *avūkātū*. Regardless of his clients' nationalities, doing otherwise would have disqualified him from representing them in the court. However, in his capacity as a litigant, De Casera was not restricted by those rules and was free to adopt a title of his choosing. Hence, he identified himself as an *avūkātū* knowing that the merchant court would not conflate his legally distinct personas as litigant and as legal practitioner.

The concept of *wakāla*, from which the title *wakīl* is derived, is established in Islamic law, and means "to commission, depute or authorize a person to act on behalf of another."[48] Therefore, the term is ubiquitous in pre-19th-century shariʿa court records, including in relation to commercial cases. The prevalence of the term is probably the reason why Zaghlul and his proponents have consistently chosen to understand the *wakīl*'s function in the mid-19th-century merchant courts as that of a business agent or deputy. In that respect, they accurately accounted for the appearance in court of business associates and blood relatives, a continuation of a centuries-old custom in shariʿa courts. They also correctly understood the roles of specialized *wakīl*s who represented creditors (*wakīl al-dayyāna*) and estates (*wakīl al-tarika*). While those specialized *wakīl*s performed lawyerly functions, their engagement with the legal regime was incidental and temporary. They were merchants or creditors who performed clerical/legal roles only as a means to sort out a current unsettled debt before returning to their standing moneymaking businesses. Given the focus of these researchers, they have hitherto missed a second group of unmarked *wakīl*s who neither were business partners to their clients, nor enjoyed any claim over the unsettled debts and inheritances being disputed in court. Rather, they represented litigants in court through the power of attorney in exchange for a fee. I argue that those unmarked *wakīl*s were effectively the forerunners of the post-1876 legal profession.

To grasp the full context, however, let us consider these two groups in order, starting with specialized *wakīl*s. Cases of bankruptcy were common in the merchant court and many such cases included several creditors. In order to facilitate a settlement between the various creditors and the insolvent debtor, creditors delegated one of them, *wakīl al-dayyāna*, to act as their representative and they were bound to comply with the settlement he reached. Ideally, one *wakīl* represented all of the creditors. However, creditors often disagreed among themselves, leading different groups within them to nominate their own *wakīl*s. When several *wakīl*s collaborated on one case, further disagreements were expected. In this situation, what determined which *wakīl*, or group of *wakīl*s, would prevail was the total percentage of the debt that their nominators owned collectively. Court records confirm that this provision was carried out consistently.

In April 1862, Hajj Muhammad Abu Hadid, an oil merchant based in Cairo's Ghuriyya quarter, stopped paying his debts to a number of European creditors. The merchant court ruled him insolvent, launching a process of debt settlement. His creditors agreed to designate two of them, *khawāja*s by the names Aslan and Kakulani, to serve as *wukalā al-dayyāna*. After Abu Hadid's goods and possessions (*mawjūdāt*) had been inventoried, Aslan and Kakulani negotiated a settlement with him. They agreed that due to his financial losses, the creditors would forgive half of his debts. They would also grant him an eight-month grace period, after which he was to pay his debts over the next ten months. As security for his debt, they had him mortgage his own home, which was located in the Barquqiyya neighborhood. When informed of the deal some of the creditors rejected it. However, the court decided that because the creditors who owned three quarters of the debt consented to the terms of the settlement, it became binding to the rest.[49]

Moreover, when the creditors did not agree on who would act as *wakīl al-dayyāna*, the court typically assigned one of its own members, a merchant, to serve as a temporary (*waqtī*) *wakīl*. This was the case especially when the creditors themselves did not bring the case of insolvency to court or, probably, when they did not expect the court to declare the defendant bankrupt in its final ruling. When a temporary *wakīl* was appointed, the creditors were given fifteen days to organize and elect a permanent *wakīl* from among them. In March 1862, around the same time that Abu Hadid was declared bankrupt, another oil merchant from Ghuriyya, Ibrahim al-Tayyib, was also facing financial troubles. In his case, instead of going to court, most of his creditors agreed with him on a debt payment arrangement. Khawaja Istiliano, a creditor who did not find the arrangement satisfactory, resorted to the merchant court, asking it to declare Ibrahim al-Tayyib bankrupt. The court granted Istiliano's request. Because most of the creditors did not initiate the case, the court had to take several steps in order to launch the debt settlement. It designated Istiliano and another creditor, Aslan, as *wukalā al-dayyāna* temporarily. It also appointed Hajj Muhammad al-Jurbaji, one of the members of the merchant court and the head of the merchants at the oil market in Ghuriyya, as bankruptcy trustee (*maʾmūr al-taflīsa*). In accordance with the Ottoman Code of Commerce, Istiliano, Aslan, and al-Jurbaji were asked to collaborate on establishing al-Tayyib's financial standing and presenting the court with his budget. As trustee, al-Jurbaji was asked to convene all the creditors within fifteen days in order to agree on how they would proceed with the case, and whether they endorsed Istiliano and Aslan as *wakīl*s. The creditors were informed that their failure to attend that meeting would deprive them of their right to participate in formulating the debt settlement.[50] The exact procedures followed in this case were routinely followed in similar cases.

The court's urge to let the creditors collectively decide on how to solve the case could be deceptive. The court reserved the right to intervene in two major ways to ensure that the proposed resolution was consistent with its mandate and with the law. First, as we have seen in Ibrahim al-Tayyib's case, it appointed a bankruptcy trustee, who was almost always one of its own presiding members. While it was the *wakīl* who was responsible for reaching a deal with the insolvent debtor in terms of payback schedule and, quite often, the exact amount of a partial reprieve, the bankruptcy trustee was responsible for liquidating the insolvent debtor's assets so as to ensure the fulfillment of the agreement. He was also the link between the creditors and the court. He informed the court in writing of the exact terms of the settlement in the form of a memorandum (*sharḥ*).

One such document was written by Muhammad al-Jurbaji, whom we met earlier. On 7 May 1874, he presented the court with a detailed account of the state of a certain Amin Yasin's bankruptcy. He ascertained that enough of the creditors agreed to the *wakīl*s' proposal to forgive 80 percent of his debts. He also ensured that Yasin was able to pay the remaining 20 percent. The *wakīl al-dayyāna* valued Yasin's current inventory of goods at a certain amount and established that his business still had an outstanding debt. Al-Jurbaji also listed the names of all twelve creditors and the exact credit amounts they claimed. Next, this explanatory memo was transcribed in the official court record. The court's final decision stated that "all legal steps have been fulfilled" (*ṣār istīfā kāffat al-ijrāʾāt al-qānūniyya*). It ruled that Yasin was able to reclaim the keys to his stores, thus signaling the successful resolution of the case.[51]

Second, the court saw cases in which a debtor complained about what he deemed to be the illegal transgressions of a *wakīl*. A telling example is the case of Hasan al-Shirbini, which opened this article. The core of the case was that Hasan was dissatisfied with the way his *wakīl al-dayyāna*, Muhammad Shumays, settled the debt. According to Hasan, there was no point in appointing Muhammad as a *wakīl* in the first place, since he was his only creditor and was only representing himself. Instead of requesting the owed money, or negotiating a settlement, Muhammad immediately confiscated his registers, traded his goods and equipment, and sold out his storage house to "one of his acquaintances" (*shakhṣ min maḥāsībihi*). He also auctioned Hasan's house and jailed him at the merchant court for fraud. The case ended with the debt being repaid and the store and other possessions returned, as we have seen earlier.[52] But the main point remains that the court found it within its jurisdiction to regulate the work of the *wakīl al-dayyāna* and to reverse his decisions in case they were unsound from a legal point of view.

Inheritance-related disputes are often mistakenly considered as falling exclusively within the jurisdiction of the shariʿa, or other confessional, courts. Even during the mid-19th century this issue confused some potential litigants as in the case of Hajj ʿUbayd ʿAbd Rab al-Masih who died before paying back a debt he owed to Khawaja Mansur. Mansur resorted to the merchant court to demand his money. Upon identifying the parties as local subjects, in this case Coptic Christians, the court explained to the plaintiff that he chose the wrong judicial forum and referred the case to the Coptic Patriarchate (*baṭrīq khānat al-aqbāṭ*) to decide on it. In explaining their decision, the judges wrote the following in the case summary: "it is known that the current norms [stipulate that merchant courts have jurisdiction over] Europeans' credit claims over the estates of the subjects of the local government, especially when the inheritors include minors."[53] In other words, merchant courts saw cases raised by foreigners against deceased local merchants' estates. This explains why another kind of *wakīl*—*wakīl al-tarika*—showed up in the merchant court.

Instead of involving every inheritor individually in the case, one person, the *wakīl al-tarika*, represented the estate. There is no record of how this *wakīl* was chosen. But merchant court cases consistently show one person speaking on behalf of the estate. This *wakīl* was responsible for presenting legal evidence that confirmed or denied the existence of such debt, its amount, and any agreements regarding the schedule of payment. Sometimes the *wakīl*'s job was straightforward and only included ensuring that papers were in order. For example, consider the case of ʿAli Bey Raghib's estate.

Topologlou Zigarah, a Greek, presented his consulate with a promissory note (*sanad*) proving that ʿAli Bey owed him a certain sum that he had borrowed in order to buy unnamed goods. The consulate forwarded Topologlou's claim to the merchant court, which in turn contacted ʿAli Bey's widow and inheritor. Her response, delivered via her *wakīl*, was: "if the *khawāja* [Topologlou] brought the note and we verified [ʿAli Bey's] seal and signature, we will pay the demanded sum."[54]

Not all cases were that straightforward but, even in more complicated cases, formulating a complex legal argument was not common. Such was the case with Saʿd Qurra's inheritance and simultaneous debt to al-Sayyid Muhammad al-ʿAwwad. Saʿd, a local merchant, died leaving behind several wives and a number of minor children. At the time of his death, he owed a fellow merchant, al-Sayyid Muhammad, the price of a horse (*rahawān*) and a shipment of cotton he had bought on credit, among other debts. Upon hearing the news of his death, al-Sayyid Muhammad went to the merchant court of Alexandria to establish his claim on the money. Because the estate was not represented, he automatically won the case. When informed of the court's decision, Saʿd's wives, who were also his primary inheritors, decided to challenge the court's ruling. Their *wakīl*s, however, must have realized that reversing the court's decision was beyond their own expertise. As far as they were concerned, Saʿd's registers proved that he owed the amount in question to al-Sayyid Muhammad.[55] The course of action available to them is a useful segue to our exploration of a different corps of *wakīl*s.

UNMARKED *WAKĪL*S AS LEGAL PRACTITIONERS

Evidently, then, the *wakīl al-dayyāna* and *wakīl al-tarika* performed clerical aspects of legal practice and negotiated financial settlements, activities that would become an integral part of the function of the members of the institutionalized legal profession after 1876. However, these specialized *wakīl*s never engaged in formulating complex legal arguments. The latter pursuit was exclusively the territory of a yet to be defined corps of unmarked *wakīl*s.[56] It is possible to distinguish between specialized *wakīl*s, such as the *wakīl al-tarika,* and unmarked *wakīl*s because they performed different functions. Furthermore, the terms on which they collaborated in court are understandable. Ideally, their roles were complementary rather than competitive. For example, the *wakīl al-dayyāna* was an incidental and temporary post. He had to be a creditor in the case at hand and his responsibilities were limited to negotiating a settlement. He did not assume any authority once the case was closed. On the other hand, the unmarked *wakīl* could be a person who has no personal stake in the case but is hired based on his track record or reputation, in exchange for a fee. What is the significance of distinguishing between these two general categories of *wakīl*s? And, how can we tell the difference between them?

Let us return to the case of the deceased Saʿd Qurra and his alleged creditor al-Sayyid Muhammad al-ʿAwwad. In the previous section, we left the *wukalā al-tarika* wondering how they could prove that al-Sayyid Muhammad's claims were unfounded. Based on Saʿd's records alone, there was no dispute over al-Sayyid Muhammad's right. Having acknowledged the authenticity of the records and left to their own devices, the inheritors' *wakīl*s failed to challenge the court ruling. After the court had specified a date to hear their complaint, they did not show up at the court. Hence, the court dismissed their request. Thanks to the court's statute that allowed for representation, they later reopened the

case with the help of a legal practitioner: a *wakīl* who had greater facility with commercial law. Thus, ʿAbduh Effendi entered the case as the *wakīl* representing the *wakīl*s of Saʿd Qurra's inheritors. The hiring of ʿAbduh Effendi hinted at a fiercer round of litigation that would involve legal efforts more subtle than checking if old records included erasures or additions. In anticipation of this escalation, al-Sayyid Muhammad hired his own *wakīl*, a similarly adept legal practitioner by the name of Khawaja Kabis. The most remarkable feature of ʿAbduh and Kabis's contest was that they transformed this dispute into one about legal procedure.

The Cairo merchant court, in its capacity as Court of Appeals (Majlis al-Abillu), received both ʿAbduh and Kabis, as *wakīl*s for the litigating parties on 9 September 1875. The first to speak was Kabis, who "raised a procedural point" (*rafaʿa masʾala farʿiyya*). He argued that his opponent's request to appeal the Alexandria court's in-abstentia ruling was unsound because he did not specify the justifications for his request. Hence, Kabis continued, his request was "void and must be denied." ʿAbduh responded that the decision of the court of first instance did not specify any reasons because it dismissed the case rather than provide a substantive ruling. Therefore, he added, there was no chance to be more specific. Convinced by ʿAbduh's argument, the court agreed to hear the case two weeks later. In the following session, ʿAbduh revealed his strategy to challenge the court's initial decision, which had required his clients to pay back al-Sayyid Muhammad. The strategy was to avoid discussing the debt under consideration while questioning the jurisdiction of the court on procedural grounds. Accordingly, ʿAbduh raised two procedural points. First, he argued that both parties, Saʿd Qurra and al-Sayyid Muhammad al-ʿAwwad, were subjects of the local government. Therefore, the dispute between them fell outside the jurisdiction of the merchant court and within that of the shariʿa court. Second, if the court decided that it enjoyed jurisdiction over this dispute, he demanded to examine al-Sayyid Muhammad's accounting ledgers because the court's initial ruling was based solely on his client's registers. ʿAbduh knew that he could reverse the court's initial ruling if he found inconsistencies such as "erasures, mark-overs or insertions" (*maḥw wa-ithbāt wa-taḥshīr*) in these ledgers. In response, Kabis showed his own familiarity with legal procedure. He explained that resorting to the merchant court was legally sound because "the plaintiff [i.e., al-Sayyid Muhammad] is a merchant and the deceased [i.e., Saʿd] was a merchant." The merchant court was the appropriate judicial venue to rule on the case because both parties to the disputes were merchants, regardless of their nationalities. Addressing the second procedural issue, Kabis insisted that examining his client's registers was unnecessary because Saʿd's records constituted sufficient proof of the debt's existence. The court was divided over the case but ultimately a majority of the eight merchants presiding over the court accepted Kabis's arguments.[57]

More significant than who won the case is how the legal battle was fought and who fought it. It is obvious that procedural matters such as jurisdiction rather than substantive issues were at the center of this battle. It is also clear that the main protagonists were not the litigants but the legal practitioners they hired to represent them. It is highly improbable that ʿAbduh and Kabis, the *wakīl*s we encountered earlier, were either partners or relatives of their clients. Each of them appeared in numerous cases to represent clients of different nationalities and businesses. It is the character of these protagonists, the unmarked *wakīl*s, that we need to scrutinize.

Treating *wakīl*s as a single monolithic group would be incorrect. *Wakīl* practices should be understood as a proxy for the legal knowledge they possessed. Mining the court records for traces of *wakīl* practices reveals three noticeable points of comparison. First, while *wakīl*s did not claim to belong to an institutionalized profession, the court recognized their status as practitioners and allowed them to offer legal counsel and represent clients. Unmarked *wakīl*s fell into one of two categories: those who had links to the litigant such as being his or her business partner or heir, and those with a primarily contractual relationship to the litigant. Second, while *wakīl*s belonging to these categories had the same legal status and were expected to perform the same duties, they performed their tasks in qualitatively different ways. One made occasional references to applicable laws. His appearance in court was limited to the one or two cases in which his relation/client resorted to the court to settle a dispute with a fellow merchant. The other cited applicable laws more heavily and in more sophisticated ways. He appeared frequently in court to represent different clients who were of different nationalities and who engaged in different types of business. Third, the emergence of this difference between two types of *wakīl*s emerged gradually during the third quarter of the 19th century. Court records from the 1850s refer exclusively to *wakīl*s of the first kind. References to laws are few and far between and are usually reflexive. By the early 1860s, the second kind of *wakīl* increasingly appeared alongside the first, and on the eve of the opening of the Mixed Courts in 1876 it had become the norm.

Some references to law were so common that they must have been widely known to the merchants who frequented the court, be they judges or litigants. Their use does not necessarily suggest deep knowledge of the relevant commercial laws. Rather, it more likely points to an understanding on the side of merchant-litigants that they were a necessary formality or, at best, an added layer of legitimacy to their claims. At any rate, referring to these legal references did not reflect an attempt to synthesize an argument as much as to request the direct application of the law. The best example of this use is Articles 147 and 150 of the Ottoman Code of Commerce.[58] These articles were referred to consistently in cases of declaring bankruptcy (*ishhār al-iflās*). That they were common knowledge is clear from the fact that their use was not limited to *wakīl*s.[59] Significantly, even in cases where the plaintiff did not mention those articles, either personally or through a *wakīl*, the court made sure to mention them in its decision. For example, on 28 February 1872 a number of creditors complained at the court that "ʿAbd-al-Malik and his son Hanna, merchants [based] at al-Hamzawi," had stopped paying their debts. The court record does not mention whether the plaintiffs referenced any laws. It states only that they presented documents that proved the validity of their claims. The documents were most probably promissory notes or accounting ledgers. However, the court lists the bases upon which it ruled to declare ʿAbd al-Malik and his son bankrupt. Those were "the documents pertaining to the case [*awrāq al-qaḍiya*] and Articles 147 and 150 of the Ottoman Code of Commerce."[60] Interestingly, in this and similar cases the content of these articles is never spelled out. Their mention was meant to instigate the direct application of the law, namely, declaring bankruptcy. Moreover, none of the court cases consulted for this study suggest that the interpretation of these articles was contested.

As common as it was, legal practitioners did not restrict themselves to this reflexive use of the law. They demonstrated a more sophisticated understanding of the law in several

ways: they mentioned uncommon law articles, referred to a combination of laws in relation to one point, explained the relationship between legal articles in different codes, and cited legal exegeses in order to give authority to a particular reading of the law. Furthermore, their preoccupation with procedure anticipated similar developments in the Ottoman center where a procedural code was issued in 1879 in the context of the Nizamiye Courts,[61] and in Palestine where turn-of-the-20th-century shariʿa courts witnessed increasingly sophisticated engagements with procedural matters on the part of *wakīl*s.[62]

To illustrate how legal practitioners deployed their knowledge of the law by combining these techniques, let us consider two final examples from the Cairo merchant court. We encountered earlier the case of Hasan al-Shirbini vs. Muhammad Shumays, as an example of how one of the responsibilities of the court was to ensure that cases of bankruptcy were handled properly, and that the court-sanctioned resolutions of such cases did not include any transgression against the insolvent merchants. Here, we are interested in the performance of legal practitioners inside the courtroom. Hasan and Muhammad did not argue directly with each other in court but did so through their *wakīl*s. Caritato, Hasan's *wakīl*, understood the core of the case well. His client had borrowed money from Muhammad and did not pay it back. Instead of negotiating a settlement, Muhammad took control of Hasan's possessions and sold or mortgaged them. When Hasan hired Caritato he must have asked him in nontechnical terms for what he believed was rightly his: his possessions and a compensation for his losses. Caritato had to deliver this message *in legal language* in court. Hence, after he listed his client's demands, he made the following statement:

> Obliging [Muhammad] to compensate [Hasan] for damages is not only appropriate [*fī maḥallihi*] but is also based explicitly on the Law. Articles 1382 and 1383 of the French [civil] Law state that if a person undertakes any action that results in harming another, the perpetrator becomes obliged to compensate the one he harmed even if his action was unintended but was the result of recklessness or poor judgment.

Caritato's statement is noteworthy for two reasons. First, to back his claim, he did not resort to the legal codes the court had identified as authoritative, namely, the Ottoman and French Codes of Commerce. Rather, he referred to the French Code of Civil Law, an Arabic translation of which had been circulating since 1867. Second, he did not find it sufficient to list the legal articles he was referring to but he explained their gist. Significantly, in order to lend his claim more weight, he went a step further.

> All jurists who composed commercial laws [*jamīʿ al-mutashārriʿīn muʾallifīn al-qawānīn al-tijāriyya*] have confirmed these original rules that are founded rationally and truthfully [*ʿaqlan wa ḥaqqan*]. Bidard [*sic*][63] the jurist, in his exegeses of bankruptcy-related rules, number 53, states that a creditor is . . . personally responsible. . . for the possible consequences of initiating a baseless case [against his debtor].

Caritato proceeded to cite more of Bidard's legal exegeses, extending his demand for fair compensation beyond the value of the damaged and confiscated possessions. His client, he argued, deserved compensation for his injured reputation. Caritato tried to win the case by overwhelming the court with legal reasons that proved the validity of his claim. He also wanted to convey to the court that his argument was sound because he was deeply familiar

with the law. Suspecting that the judges were not familiar with these fine legal points, he felt compelled to explain every article or juristic reference. On the other side, the plaintiff's *wakīl*, ʿAbduh, was either ignorant of these points or realized that they would not convince the court members. His rebuttal seemed less impressive in that it did not display specific knowledge of the law. Rather, he appealed to a well-known legal principle. "Legally, every merchant who is unable to pay his debts is bankrupt." Next, he appealed to the court's sense of fairness. "Of all of [Hasan] al-Shirbini's possessions, what was sold did not exceed twenty pounds," a fraction of the debt.

After deliberation, the court decided that ʿAbduh's jargon-free argument was more convincing. If ʿAbduh's client, Muhammad, was to receive his money and return Hasan's possessions there would be no case.[64] Although it did not prevail, Caritato's line of argument reflected a qualitatively different knowledge of the law compared to that of his contestant. If he had been the only one to display such abilities, we could dismiss him as an anomaly. But starting from the early 1860s, *wakīl*s who performed their jobs in similar ways were increasingly appearing in the merchant court. In June 1862, a written correspondence between two *wakīls*, Jirjis Shakur and Mkrtich Bey,[65] reveals comparable legal acculturation. Jirjis and Mkrtich's clients were in disagreement over the distribution of profits from a number of boats they owned jointly. Jirjis's client had not collected his share, one-twelfth in case of profit or loss since April 1857. Because he was denied his rightful share, his *wakīl* argued that Article 40 of the Ottoman Code of Commerce allowed him to resort to arbitration. Implied in his statement was a request to the merchant court to help him enforce the requested arbitration. Mkrtich responded, citing Article 146 of the same code, which stipulated that unclaimed rights were annulled after five years.

Until that point, the legal debate was confined to the Ottoman Code of Commerce, the primary legal text applicable at the merchant court. Realizing that he might have reached a dead end, Jirjis decided that identifying the appropriate article of the code was not sufficient for him to win the case. Thus, he took the discussion to a higher level by linking a number of legal texts in a way that would be unlikely for a *wakīl* with a more limited knowledge of the law to do. He explained,

> Article 146 of the Ottoman Code of Commerce is not relevant to the case at hand. It applies exclusively to [insurance?] policies and transfers [*al-būliṣa wa-l-ḥiwāla*]. [However,] Article 146 is identical to [*yuṭābiq ilā*] Article 189 of the French Civil Code, which refers to Article 2262 of the same [civil] code.

Jirjis's move was meant to highlight two points. First, it revealed his ability to simultaneously navigate two legal codes, one Ottoman and the other French. Therefore, he was able to simultaneously base the legality of his claim on both codes. Second, his move suggested that he knew not only the content of these laws but also their relationship to one another, or at least tried to give the court this impression. The discussion lingered on for another two rounds, in which Jirjis and Mkrtich made references to the French Code of Commerce and the merchant court's statute. Ultimately, the court ruled in Jirjis's favor.[66] However, it is noteworthy that the complexity of Jirjis's argument was unlikely to be matched by a one-time *wakīl* whose engagement with the courts would have been incidental.

The two cases discussed in this section strongly suggest that *wakīl*s such as Caritato, Jirjis, and Mkrtich had a set of tools and techniques at their disposal that was qualitatively different than that of other *wakīl*s. As legal practitioners, they were astute in exploiting procedural points to avoid entering into substantive debates. They navigated several legal codes and referred to legal exegeses to lend their arguments more weight. They also understood the relationship between different legal articles and were able to link them in order to synthesize a legal argument.

CONCLUSION

The aim of this article was to study the features and agents of legal practice in Egypt prior to the establishment of the Mixed and National Courts, which are widely considered to have inaugurated the modern legal profession. Identifying the mid-19th-century merchant courts of Cairo and Alexandria as the first sites within the modern bureaucracy of the khedival state to allow legal representation, the article followed those individuals who carried the unqualified title of *wakīl* into the courtrooms to document their practices. Out of eighty cases seen by the court in Cairo between 15 September 1855 and 9 September 1856, the heading of only one case listed a *wakīl*'s name. The *wakīl*, Mikhaʾil al-Musili, was most likely a relative of the litigant he was representing, Faraj Allah al-Musili.[67] By contrast, out of roughly 300 cases that the same court adjudicated between 12 September 1871 and 5 September 1872, one *wakīl* alone, Khawaja Tito Figari who had studied law as part of the 1855 education mission to France, represented twenty-eight different clients in thirty different merchant court cases (almost 10 percent of the total number of cases heard during that year).[68] His clients came from at least six different states, including the wider Ottoman Empire. Due to the lack of comprehensive statistics, we cannot assume that Figari's case is representative. However, the frequency of his appearance in the merchant court is indicative of the ordinariness of hiring *wakīl*s, who were legal practitioners and not just business associates. These *wakīl*s maintained a strong presence in court records until merchant courts were discontinued in 1876, the same year that witnessed the opening of the Mixed Courts. This empirical research establishes the emergence of a new cohort of modern legal practitioners in the early 1860s whose occupational norms strongly resembled those of post-1876 professional lawyers who practiced before the Mixed and National Courts, and who are deemed by historians as the first link in an unbroken genealogy that culminates in the contemporary Egyptian legal profession.

NOTES

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[1]Egyptian National Archives (Dar al-Wathaʾiq al-Qawmiyya, hereafter DWQ) 3036-000206, 20 B 1291 (1 September 1874), #201: 123–24.

[2]Jasper Yeates Brinton, *The Mixed Courts of Egypt* (New Haven, Conn.: Yale University Press, 1930), ix.

[3]The termination of the Mixed Courts took place gradually over a period of twelve years as part of the abolition of the Capitulations. See *Convention Regarding the Abolition of the Capitulations in Egypt Signed at Montreux, on May 8th, 1937*, accessed 29 August 2016, https://www.loc.gov/law/help/us-treaties/bevans/m-ust000003-0411.pdf.

[4]For a discussion of the contradictions inherent to the liberal paradigm of separation of powers and its relationship to shariʿa-based legal regimes, see Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2014), 37–73.

[5]For example, Amr al-Shalaqani discusses pre-1876 judicial reforms at some length but only considers legal practice in light of his exploration of the Mixed and National Courts. See Amr al-Shalaqani, *Izdihar wa-Inhiyar al-Nukhba al-Qanuniyya al-Misriyya, 1805–2005* (Cairo: Dar al-Shuruq, 2013).

[6]Using a similar logic, the professionalization of the practice of law in continental Europe is typically dated to the aftermath of the 1848 Revolutions. See Thomas Henne, "Advocate: Medieval and Post-Medieval Roman Law," in *The Oxford International Encyclopedia of Legal History*, ed. Stanley N. Katz (New York: Oxford University Press, 2009), accessed 25 May 2017, http://www.oxfordreference.com/view/10.1093/acref/9780195134056.001.0001/acref-9780195134056-e-22. For a sociological grounding of the link between modern professions and "institutionalization" and "common credentials," see Eliot Freidson, *Professional Powers: A Study of the Institutionalization of Formal Knowledge* (Chicago: University of Chicago Press, 1986). For a study of Egypt that adheres to the same logic, see Donald M. Reid, "The Rise of Professions and Professional Organizations in Modern Egypt," *Comparative Studies in Society and History* 16 (1974): 24–57.

[7]The Mixed Bar Association, established in 1876, was the first such association and included only lawyers who practiced before the Mixed Courts. A similar association for lawyers at the National Courts was founded in 1912.

[8]In Egypt, institutionalized legal training was offered as early as 1849 as part of the curriculum of the School of Administration and Languages but was directed primarily toward training students for government positions. Farhat J. Ziadeh, *Lawyers, the Rule of Law and Liberalism in Modern Egypt* (Stanford, Calif.: Hoover Institution on War, Revolution and Peace, Stanford University, 1968), 21.

[9]Avi Rubin, "From Legal Representation to Advocacy: Attorneys and Clients in the Ottoman Nizamiye Courts," *International Journal of Middle East Studies* 44 (2012): 111–27.

[10]Yoav Di-Capua, *Gatekeepers of the Arab Past: Historians and History Writing in Twentieth-Century Egypt* (Berkeley, Calif.: University of California Press, 2009), 71–77.

[11]Gustav Le Bon, *Sirr Tatawwur al-Umam*, trans. Ahmad Fathi Zaghlul (Cairo: Matbaʿat al-Maʿarif, 1913); Edmond Demolins, *Sirr Taqaddum al-Inkliz al-Saksuniyyin*, trans. Ahmad Fathi Zaghlul (Cairo: al-Matbaʿa al-Rahmaniyya, n.d.).

[12]ʿAziz Khanki and Jamil Khanki, *al-Muhamah Qadiman wa-Hadithan* (Cairo: s.n., 1940); ʿAziz Khanki, *al-Tashriʿ wa-l-Qadaʾ Qabl Inshaʾ al-Mahakim al-Ahliyya* (Cairo: al-Matbaʿa al-ʿAsriyya, n.d.).

[13]ʿAziz Khanki, *Turk wa-Ataturk* (Cairo: al-Matbaʿa al-ʿAsriyya, 1970).

[14]Zaghlul, *al-Muhamah* (Cairo: Matbaʿat al-Maʿarif, 1900), especially the first section.

[15]Ibid., 21–22.

[16]Ibid., 1.

[17]As Khaled Fahmy notes, Zaghlul and Khanki's accounts dismissed the mid-19th-century "legal system . . . as despotic and inefficient . . . [and] essentially characterised by a series of lacks and absences." Khaled Fahmy, "Law and Pain in Khedival Egypt," in *Outside In: On the Margins of the Modern Middle East*, ed. Eugene Rogan (London: I.B.Tauris, 2002), 86–87.

[18]Samera Esmeir has noted the absence of any study "detailing the practices of the legal profession prior to 1883." *Juridical Humanity: A Colonial History* (Stanford, Calif.: Stanford University Press), 43.

[19]Latifa Muhammad Salim, *al-Nizam al-Qadaʾi al-Misri al-Hadith*, 2 vols. (Cairo: Dar al-Shuruq, 2010). See also, al-Shalaqani, *Izdihar wa-Inhiyar*; and Ziadeh, *Lawyers*.

[20]Ziadeh, *Lawyers*, 41–42. What this law did in effect was distinguish between different kinds of legal practitioners. In 1910 another law would equate educated lawyers with practitioner lawyers.

[21]ʿAziz Khanki, *al-Mahakim al-Ahliyya wa-l-Mahakim al-Mukhtalata: Madiah, Hadiruha, Mustaqbaluha* (Cairo: al-Matbaʿa al-ʿAsriyya, 1939), 176–77. Also, Ahmad Fathi Zaghlul clarifies the responsibilities of the association, namely "protecting the status, reputation and rights of the legal profession and ensuring that it fulfills its duties." Zaghlul, *al-Muhamah*, 297–98.

[22]Zaghlul, *al-Muhamah*, 373–74.

[23]Ibid., 274.

[24]Ibid., 248.

[25]Ibid., 270. Zaghlul looked for a formal charter that regulated the occupation but did not find it. Farhat Ziadeh claims that no Egyptian *wakīl*s succeeded based on the documents of the Mixed Bar Association. However, he does not mention non-Egyptian *wakīl*s. Ziadeh, *Lawyers*, 29.

[26]Quoted in Ziadeh, *Lawyers*, 37–38.

[27]This interest on the part of professionals to monopolize the history of their own profession is consistent with the sociological conception that "the absolutely necessary" formal attribute of any given profession is that its members master "a body of esoteric knowledge," which only they can apply "to social needs." Jan Goldstein, "Foucault among the Sociologists: The 'Disciplines' and the History of the Professions," *History and Theory* 23 (1984): 174–75.

[28]Avi Rubin raises a similar point in relation to the history of the legal profession in the Ottoman center. However, his sources date to the post-1879 years, which he designates as "the final phase of [the] evolution" of the modern Nizamiye courts. Rubin, "From Legal Representation."

[29]J. Heyworth-Dunne, *An Introduction to the History of Education in Modern Egypt* (London: Frank Cass & Co Ltd, 1968), 324–26. For an incomplete list of student members of the education missions (1826–80) and their careers upon their return to Egypt, see Ibid., 157–80, 221–22, 243–63, 301–7, 323–29, 436.

[30]Byron D. Cannon, "Social Tensions and the Teaching of European Law in Egypt Before 1900," *History of Education Quarterly* 15 (1975): 299–300. The year 1868 witnessed the founding of the Oriental School of Languages and Administration, the precursor of the Cairo University Law School. Its founding director "focused on producing [law] practitioners before scholars" with limited success until the mid-1880s. The number of graduating students in 1874 and 1875 were seven and five respectively. Leonard Wood, *Islamic Legal Revival: Reception of European Law and Transformations in Islamic Legal Thought in Egypt, 1875–1952* (New York: Oxford University Press, 2016), 154–56.

[31]*Nabulyun* [Napoleon], *Taʿrib al-Qanun al-Faransawi al-Madani* (Cairo: al-Matbaʿa al-Khidiwiyya, 1866 or 1867).

[32]For example, Tito Figari, an oft-hired *wakīl* in merchant court cases, also represented litigants before the British consular court in Cairo. See British National Archives, FO 841/33/31, Platero, Vita (British) Vs. Yeghen, Haleel Pasha (Ottoman), 1870.

[33]Although non-Muslims enjoyed communal autonomy, there is strong historical evidence that they did not always have access to permanently functioning communal courts. As a result, their engagements with the law likely took place in shariʿa courts. Najwa Al-Qattan, "Dhimmis in the Muslim Court: Legal Autonomy and Religious Discrimination," *International Journal of Middle East Studies* 31 (1999): 429–44.

[34]Ronald C. Jennings, "The Office of Vekil (Wakīl) in 17th Century Ottoman Sharia Courts," *Studia Islamica* 42 (1975): 148–49.

[35]C.E. Bosworth, "Tarḏjumān," in *Encyclopedia of Islam,* 2nd ed., ed. P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, and W.P. Heinrichs (Brill Online, 2012), accessed 25 May 2017, http://dx.doi.org/10.1163/1573-3912_islam_COM_1179.

[36]For a thorough example from early modern Egypt, see Nelly Hanna, *Making Big Money in 1600: The Life and Times of Ismaʿil Abu Taqiyya, Egyptian Merchant* (Syracuse, N.Y.: Syracuse University Press, 1998).

[37]For an overview, see Rudolph Peters, "Administrators and Magistrates: The Development of a Secular Judiciary in Egypt, 1842–1871," *Die Welt des Islams* 39 (1999): 378–97.

[38]Jan Goldberg, "On the Origins of *Majālis al-Tujjār* in Mid-Ninetheeth Century Egypt," *Islamic Law and Society* 6 (1999): 206–10.

[39]Article 6 of *Tartib Majalis al-Tujjar*, published in Zaghlul, *al-Muhamah,* appendix, 31–42.

[40]Article 5 of *Tartib al-Qanasil*, published in Zaghlul, *al-Muhamah,* appendix, 43–45.

[41]Articles 1 and 8 of *Laʾihat al-Arbaʿin Band*, published in Zaghlul, *al-Muhamah*, appendix, 45–52.

[42]Amalia D. Kessler. *A Revolution in Commerce: The Parisian Merchant Court and the Rise of Commercial Society in Eighteenth-Century France* (New Haven, Conn.: Yale University Press, 2007).

[43]Ibid., 28.

[44]Khalid ʿId al-Naghia, "Majlis Tujjar Misr (1846–1876): Dirasa Wathaʾiqiyya," *al-Ruznama: The Egyptian Documentary Annals* 2 (2004): 239–405.

[45]DWQ 3036-000206, 18 Z 1290 (6 February 1874), #86: 50–51.

[46]DWQ 3036-000419, 24 Z 1292 (21 January 1876), #44: 21–22.

[47]For two additional examples see, DWQ 3036-000206, 11 Za 1290 (31 December 1873), #75: 44–45 and DWQ 3036-000419, 16 Sh 1292 (17 September 1875), #1: 1.

[48]Mawil Y. Izzi Dien, "Wakāla," in *Encyclopedia of Islam,* 2nd ed., accessed 25 May 2017, http://dx.doi.org/10.1163/1573-3912_islam_SIM_7830.

[49]DWQ 3036-000409, 25 S 1279 (21 August 1862), #197: 72.

[50]DWQ 3036-000409, 10 N 1278 (10 March 1862), #9: 6. The court listed the following articles of the Ottoman Code of Commerce as grounds for its decision: 147, 150, 170, 210, and 214.

[51]DWQ 3036-000206, 21 Ra 1291 (7 May 1874), #140: 85–86.

[52]DWQ 3036-000206, 20 B 1291 (1 September 1874), #201: 123–24.

[53]DWQ 3036-000409, 6 M 1279 (3 July 1862), #125: 47–48. For similar examples, see, DWQ 3036-000206, 14 N 1290 (5 November 1873), #32: 23 and DWQ 3036-000419, 22 Sh 1292 (23 September 1875), #3: 2–3.

[54]DWQ, 3036-000419, 16 Sh 1292 (17 September 1875), #2: 1–2.

[55]DWQ, 3036-000419, 16 Sh 1292 (17 September 1875), #3: 2–3.

[56]Ottoman sources from the late 1870s draw a clear distinction between the titles *vekil* and *dava vekil* (lit. "trial agent"), the latter being a certified attorney. See Rubin, "From Legal Representation," 116–19. Until it was dissolved in 1876, the Cairo merchant court did not make such a clear distinction, at least not consistently. Hence, legal practitioners were seldom referred to as *wakīl al-daʿwa* but almost always only as *wakīl*.

[57]DWQ, 3036-000419, 16 Sh 1292 (17 September 1875), #3: 2–3.

[58]This was the most common combination although Article 147 was also mentioned alone, and in combination with other articles.

[59]For one example of a *wakīl* using these articles, see DWQ 3036-000503, 11 R 1288 (11 July 1871), no number: 13.

[60]DWQ 3036-000503, 18 Z 1288 (28 February 1872), no number: 29. For an additional example, see, DWQ 3036-000206, 13 Za 1290 (2 January 1874), #79: 47.

[61]Rubin, "From Legal Representation," 112.

[62]Iris Agmon, *Family and Court: Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse, N.Y.: Syracuse University Press, 2006).

[63]The "Bidard" in question is most probably Paul Bidart, who earned his doctorate in law from the Paris Faculty of Law in 1865, and who published on civil law including interpretations of specific legal articles in the 1860s. A possible, though less likely, alternative is Théophile Bidard, who was the dean of the Rennes Faculty of Law (1861–64) but who does not have a substantial list of legal writings to his name. See *Catalogue général des livres imprimés de la Bibliothèque nationale: Auteurs*, vol. 12 (Paris: Imprimerie nationale, 1897), 1185–87.

[64]DWQ 3036-000206, 20 B 1291 (1 September 1874), #201: 123–24.

[65]This is a letter-for-letter transliteration of the Arabic spelling of an Armenian name. The modern Turkish spelling of the same name is "Mıgırdiç."

[66]DWQ 3036-000409, 3 M 1279 (30 June 1862), #117: 44–45.

[67]DWQ 3036-000125, unspecified date between September and November 1855, no number: 28–30.

[68]All cases come from DWQ 3036-000503, 26 J 1288 (12 September 1871) – 2 B 1289 (5 September 1872).