MUGHALS, OTTOMANS, AND THE QUESTION OF "CODES" IN ISLAMIC LEGAL HISTORY:

The Case of the Fatāwā-yi ʿĀlamgīrī (al-Fatāwā al-Hindīyya) from Early Modern Roots to Modern Legacies

Faiz Ahmed, J.D., Ph.D.

About the Author

Joukowsky Family Distinguished Associate Professor of Modern Middle Eastern History, Brown University, Department of History. The author wishes to thank the anonymous reviewers for their insightful comments, as well as participants in the Law in South Asia panel at the meeting of the Association of American Law Schools (San Francisco, 2025); the Ottoman and Indian Legal Manuscripts and Heritage conference held at Istanbul University (2016); and the Early Modern Law in the Muslim World panel at the meeting of the American Society for Legal History (Miami, 2013). The author dedicates this Article to the loving memory of Mohammed Ainuddin Shaikh, Saulat Ghani, and Akhtar Ali.

Table of Contents

As Mughal territorial expansion was reaching its zenith in the mid-seventeenth century, Mughal emperor Awrangzīb ʿĀlamgīr (r. 1658–1707) commissioned a grand council of Muslim legal scholars for a weighty purpose: to produce a comprehensive and authoritative manual of law for the use of governors and judges across his Indian empire. Named eponymously after its

royal patron and compiled over a decade from *circa* 1662–1672, the *Fatāwā-yi ʿĀlamgīrī* has in the three and a half centuries since its publication generated a large commentary, gloss, and manual literature in Arabic, Persian, Turkish, and Urdu, and is considered an authoritative restatement of Ḥanafī *fiqh* (jurisprudence) across a range of devotional, legal, and public administrative issues.[1] Usually published in five or six volumes, this sizeable text—which is better known as the *Fatāwā Hindīyya* outside of the Indian subcontinent—has become a canonical reference for Ḥanafī muftis, seminarians and law students, and even some courtroom officials in jurisdictions as diverse as Pakistan and India, Turkey and Syria, and Indo-Muslim diasporic communities around the world.[2]

Yet, compared to the more well-known Ottoman law "codes" based on Ḥanafī *fiqh* like the *Mecelle* (*Majalla al-Aḥkām al-ʿAdlīyya*), compiled in 1869–1875 by the extraordinary *faqīh*, historian, and Minister of Justice Ahmet Cevdet Pasha (1822–1895) and his commission of some fifteen jurists, we seem to know far less about the genesis and the authors of Shāh Awrangzīb's magnum opus. Or, for that matter, how Mughal scholars and administrators rationalized and employed the Islamic juristic devices of *siyāsa* and *qānūn* in the production of their landmark text. These are conspicuous lacunae in light of ongoing academic debates surrounding codification in Islamic law, such as the historical roots and

1. Shāh Awrangzīb ʿĀlamgīr's famed compendium is known by more than one name in different regions of the Islamicate world today—i.e., *Fatāwā-yi ʿĀlamgīrī* (or simply *al-ʿĀlamgīrīyya*) is the standard title in South Asia, with *Fatāwā Hindīyya* being relatively more common in Turkey and the Arab world. Given the work's significance in both Mughal and Ottoman domains, this Article shall use both titles interchangeably. Note on transliteration and translation: author has employed the *International Journal of Middle East Studies* (IJMES) Arabic transliteration system in general, with the following exceptions. The IJMES Persian transliteration system is employed for quotations and terms in Persian, Pashto, and Urdu, and modern (Republican) Turkish orthography for terms in Ottoman Turkish. Words commonly found in the Merriam-Webster English dictionary today are not translated or transliterated.

2. For commonly cited editions in Arabic, Turkish, and Urdu over the past century, *see* AL-FATĀWĀ AL-HINDĪYYA AL-MUSSAMA BIL-FATĀWĀ AL-ʿĀLAMKIRĪYYA (Beirut, Dār Iḥyāʾ al-Turāth al-ʿArabī 1980); AL-FATĀWĀ AL-HINDĪYYA FĪ MADHHAB AL-IMĀM AL-AʿẒAM ABĪ ḤANĪFA AL-NUʿMĀN (Beirut, Dār Iḥyāʾ al-Turāth al-ʿArabī 2002); FATĀWĀ HINDĪYYA FĪ MADHHAB AL-IMĀM ABĪ ḤANĪFA AL-NUʿMĀN (Beirut, Dār Ṣādr 1991); İSMAIL KARAKAYA, FETÂVÂYI HINDIYYE (FETÂVÂYI ALEMGIRIYYE) I-XVI (Ankara, Akçağ 1984–88); AL-FATĀWĀ AL-HINDĪYYA FĪ MADHHAB AL-IMĀM AL-AʿẒAM ABĪ ḤANĪFA AL-NUʿMĀN (Beirut, Dār al-Maʿrifa lil Tibāʿa wa al-Nashr 1973); FATĀWĀ ʿĀLAMGĪRĪ: MUKAMMIL MUDALLIL URDŪ (Deoband, Wasim Book Depot 1968); SAYYID AMĪR ʿALĪ, FATĀWĀ-YI ʿĀLAMGĪRĪ (Lucknow, Naval Kishore 1932); SAYYID AMĪR ʿALĪ, FATĀWĀ-YI HINDĪYYA, AL-MAʿRŪF BI FATĀWĀ-YI ʿĀLAMGĪRĪYYA, (Lahore, Maktab-i Raḥmānīyya). For one of the earliest manuscript copies available today, that of British orientalist and judge Sir Williams Jones (1746–94) held at the British Library in London, *see* Jonathan Lawrence, *Sir Williams Jones' manuscript of al-Fatawa al-'Alamgiriyyah*, BRITISH LIBRARY ASIAN AND AFRICAN STUDIES BLOG (Apr. 20, 2020), https://blogs.bl.uk/asian-and-african/2020/04/sir-william-jones-manuscript-copy-of-al-fatawa-al-alamgiriyyah.html. When citing the original *Fatāwā-yi ʿĀlamgīrī* text in Arabic, this Article will be using the following Arabic edition: AL-FATĀWĀ AL-HINDĪYYA FĪ MADHHAB AL-IMĀM AL-AʿẒAM ABĪ ḤANĪFA AL-NUʿMĀN (Beirut, Dār Iḥyāʾ al-Turāth al-ʿArabī 2002) [hereinafter FH-2002].

impact of codifying *fiqh*; its purported benefits and drawbacks, and its ultimate legitimacy or efficacy; among other vexed questions including the relationship of projects to codify Islamic law to European colonialism and other forms of imperial rule.[3] Regardless of how historians and legal scholars weigh in on these questions today, the *Fatāwā-yi ʿĀlamgīrī* remains relatively understudied as a historical text compared to its later Ottoman counterparts.[4]

This Article has the following goals, divided into three respective parts. First, it seeks to locate the *Fatāwā-yi ʿĀlamgīrī* in its historical and juridical context. Building on earlier findings by historians and legal scholars of late medieval and early modern India, Part I historicizes the *Fatāwā Hindīyya* i its early modern context, and more specifically, within the legal genre of state-sponsored juristic compilations, beginning with the *qānūnnāmihs (kanunnames)* and fatwa collections of the Seljuk Empire (1016–1307) and Delhi Sultanate (1206–1526), and proceeding to the Ottoman and Mughal empires from the fifteenth through seventeenth centuries. In the process it explores how questions of codifying *fiqh* took on a new meaning with the groundbreaking juristic project described in this Article as "proto-codification," a process launched with Awrangzīb's imperial patronage and culminating in the *Fatāwā-yi ʿĀlamgīrī*.

---

3. There is a robust scholarly literature on these questions. For a few examples of academic debates on codification in Islamic legal history, including but not limited to the historic *fiqh* tradition, *see* Wael B. Hallaq, Sharīʿa: Theory, Practice, Transformations (2009), especially chapters 13–15; Amr Shalakany, *Islamic Legal Histories*, 1 Berkeley J. of Middle E. Islamic L. 1 (2008); Avi Rubin, *Modernity as a Code: The Ottoman Empire and the Global Movement of Codification*, 59 J. Econ. Soc. Hist. Orient 828 (2016); Samy A. Ayoub, Law, Empire, and the Sultan: Ottoman Imperial Authority and Late Ḥanafī Jurisprudence (2020).

4. While a comparative legal history of the Ottomans and Mughals—including their shared, divergent, and novel approaches to the interpretation and implementation of Islamic law—is an especially glaring void, there has been relatively more academic attention to comparing the military, political, and social history of the three "gunpowder" empires of the Mughals, Ottomans, and Safavids. *See* Suraiya Faroqhi, The Ottoman and Mughal Empires: Social History in the Early Modern World (2019); Stephen Dale, The Muslim Empires of the Ottomans, Safavids, and Mughals (2010); Naimur Rahman Farooqi, Mughal-Ottoman Relations (2009). This is not to downplay the need for more comparative legal histories between imperial Islamicate dynasties, states, and societies (such as that of the Ottomans and Mughals), and imperial-colonial British, Russian, French, or Dutch approaches to Islamic law and their respective Muslim subject populations as well. For example, *see* Dina Rizk Khoury & Dane Kennedy, *Comparing Empires: The Ottoman Domains and the British Raj in the Long Nineteenth Century*, 27 Compar. Stud. South Asia, Africa, and Middle East 2, 233 (2007); C.A. Bayly, *Distorted Development: The Ottoman Empire and British India, circa 1780–1916*, 27 Compar. Stud. South Asia, Africa, and Middle East 2, 332 (2007); Alexander Morrison, *Russian Rule in Turkestan and the Example of British India, c. 1860–1917*, 84 Slavonic and East European Rev. 4, 666 (2006); Iza Hussin, The Politics of Islamic Law: Local Elites, Colonial Authority and the Making of the Muslim State (2016); and Nurfadzilah Yahaya, Fluid Jurisdictions: Colonial Law and Arabs in the Southeast Asia (2020).

Part II turns to notable contributions, and the probable goals, of Awrangzīb's juridical magnum opus. It argues that the *Fatāwā-yi ʿĀlamgīrī* represented an early modern attempt by a Muslim state to uniformize sacred law in order to better fulfill the prerogatives of sovereign power—maintaining civil order, supervising subjects, officials, and markets, and settling property disputes—but also *expanding* the power of the state in each of these social, financial, and administrative realms. As a "proto-code," the impact of the *Fatāwā-yi ʿĀlamgīrī* was developing a broader wingspan for intervention and control into the daily lives of subjects characteristic of the modern disciplinary state. This represented a substantial shift and nascent transformation of the Muslim sovereign's power from prior, relatively decentralized, and diffuse modalities of governance characteristic of earlier epochs, characterized by the predominance of highly localized juridical actors and communal norms rather than the uniform directives of a central government.[5]

Here it is important to acknowledge that the *Fatāwā-yi ʿĀlamgīrī* was in several respects a transitional kind of text from the late medieval genre of fatwa collections to what is described in this Article as an early modern "proto-code." That is to say, while the compendium was firmly anchored in the late medieval and early modern genre of fatwa collections (specifically within the Ḥanafī school of *fiqh*), it was also contributing to a new kind of Islamic legal genre that would eventually evolve into the modern "Islamic law code" as epitomized in the Ottoman *Mecelle* some two centuries later. While maintaining some continuity with the precedents of earlier fatwa collections, the *Fatāwā Hindīyya* was novel and innovative in substantial ways. There were new chapters on procedural matters, for example, providing a relatively more systematic organization on matters like judicial proceedings and decrees, legal forms and devices, as well as more streamlined guidelines for conventional topics like marriage, divorce, and rules of inheritance, including questions of legal procedure, thereby indicating a new aspect of the compendium and bringing it closer to the contemporary definition of a "code."

5. On modern transformations to the interpretation and implementation of Islamic law more broadly, including but not limited to codification and the Ḥanafī *fiqh* tradition in the late Ottoman Empire and Egypt, *see* Hallaq, *supra* note 3; Shalakany, *supra* note 3; Avi Rubin, Ottoman Nizamiye Courts: Law and Modernity (2011); Martha Mundy & Richard Saumarez Smith, Governing Property, Making the Modern State: Law Administration and Production in Ottoman Syria (2007); Reem Meshal, Sharia and the Making of the Modern Egyptian: Islamic Law and Custom in the Courts of Ottoman Cairo (2014); Ayoub, *supra* note 3; Khaled Fahmy, In Quest of Justice: Islamic Law and Forensic Medicine in Modern Egypt (2023). It is also important to acknowledge the rich and advanced state of scholarly literature in Turkish on these themes, *e.g.*, Ömer Lütfi Barkan, XV ve XVI İnci asirlarda Osmanli İmparatorluğunda ziraî ekonominin hukukî ve malî esaslari: 1 Kanunlar (1943); Halil İnalcik, Osmanli'da devlet, hukuk ve adâlet (2016); Osmanli'da İlm-i fikih: âlimler, eserler, meseleler (Mürteza Bedir et al. eds., 2017). On the enduring impact of Ottoman centralization vis-à-vis Islamic law in the post-Ottoman Middle East, *see* for example, Jakob Skovgaard-Petersen, *Levantine state muftis: An Ottoman Legacy?*, *in* Late Ottoman Society: The Intellectual Legacy 274–88 (Elisabeth Özdalga ed., 2005).

It would be inaccurate to characterize the *Fatāwā Hindīyya* as a modern law code, however, at least as the term is conventionally employed by most lawyers and judges today. Specifically, Mughal emperor Awrangzīb's corpus never became the sole binding reference for an area of law to the exclusion of other sources, whether during his reign or anyone after. Still, its influence as an early modern compendium of law, both substantive and procedural, that established a bold precedent for juridical centralization projects in South Asia and the Ottoman lands remains understudied. Part III, the final section of the Article, turns to the compilation's legacy in and outside the Indian subcontinent into the modern era. The Article discusses how the idea of a comprehensive restatement of the most authoritative Ḥanafī positions in a range of issues facing early modern rulers laid an important precedent for subsequent codes of Islamic law in other Ḥanafī jurisdictions, including British India, the late Ottoman Empire, and Afghanistan. Diverse as these contexts were, the compilation became a prominent reference for both independent Muslim lawmakers and European colonial administrators carrying out their own centralization campaigns in the nineteenth and into the twentieth centuries. The latter underscores the longevity, versatility, and wider circulation of the *Fatāwā-yi ʿĀlamgīrī*, a text produced in the seventeenth century Indian subcontinent, but with far-reaching implications for multiple communities and jurisdictions until this day.

I. Genealogy of the *Fatāwā-yi ʿĀlamgīrī*: Early Modern Roots

For a canonical text of its prominence in the Ḥanafī *madhhab*, the largest school of Islamic jurisprudence in the world, the *Fatāwā-yi ʿĀlamgīrī* has attracted a surprisingly modest amount of scholarly attention when it comes to its historical production and dissemination. To the author's knowledge and with some notable exceptions, the compendium has still not acquired extensive academic attention in English or other European languages in this regard. Mona Siddiqui (1996; 1998; 2012) has provided extended discussions of the compendium when it comes to important issues in Ḥanafī family law, especially the concept of *kafāʾa* (compatibility in marriage) and *wilāya* (guardianship).[6] An edited volume in the same year by the legal scholars and anthropologists Muhammad Khalid Masud, Brinkley Messick, and David S. Powers on muftis and Islamic legal interpretation includes a brief discussion of Awrangzīb's compilation as emerging from the historic genre of fatwa collections that circulated among the administration of Seljuk and other Turko-Mongolian sultanates of

6. Mona Siddiqui, *Law and Desire for Social Control: An Insight into the Ḥanafī Concept of Kafaʾa with Reference to the Fatāwā ʿĀlamgīrī (1664–72)*, *in* Feminism and Islam: Legal and Literary Perspectives 49-68 (Mai Yamani ed., 1996); Mona Siddiqui, *The Concept of Wilaya in Ḥanafī Law: Authority versus Consent in al-Fatāwā al-ʿĀlamgīrī*, 5 Y.B. Islamic Middle E. L. 171 (2000); Mona Siddiqui, The Good Muslim: Reflections on Classical Islamic Law and Theology 10–35 (2012).

late medieval to early modern Khorasan, Transoxiana, and India.[7] Muhammad Qasim Zaman's pioneering study (2002) of the *ʿulamāʾ* in modern South Asia provides a brief discussion of the fatwa compilation's role in the late Mughal state's attempt to centralize juridical authority amid the legal pluralism of Indian societies, even as "the compilers of the *ʿĀlamgīrīyya* did little to try to harmonize the diversity of opinions in the Ḥanafī legal tradition . . . giving the judges as well as the muftis considerable choice in dealing with the cases brought to them."[8] Overall, Mouez Khalfaoui's *Pluralism and Plurality in Islamic Legal Scholarship: The Case of the Fatāwā l-ʿālamgīrīya* (2021) remains the leading academic monograph in English focused on the *Fatāwā Hindīyya* to date.[9] Khalfaoui's close textual analysis of the *Fatāwā-yi ʿĀlamgīrī* focuses on doctrines concerning the status of India's non-Muslims and coexistence with Muslims, along with comparisons to and debates between Indian Ḥanafīs and their counterparts of the school in Central Asia and the Ottoman lands.[10]

However, there has yet to be a book focused on the text's origins, process of compilation, and role in the late Mughal empire's administration of justice. To the

7. Islamic Legal Interpretation: Muftis and their Fatwas (Muhammad Khalid Masud et al. eds., 1996).

8. Muhammad Qasim Zaman, The Ulama in Contemporary Islam: Custodians of Change 20 (2002).

9. Mouez Khalfaoui, Pluralism and Plurality in Islamic Legal Scholarship: The Case of the Fatāwā l-ʿālamgīrīya (2021). This work follows Khalfaoui's groundbreaking dissertation published in French, Mouez Khalfaoui, L'islam indien—pluralité ou pluralisme: le cas d'al-Fatāwā al-Hindīyya (2008), and subsequent article, Mouez Khalfaoui, *From Religious to Social Conversion: How Muslim Scholars Conceived of the Rites de Passage from Hinduism to Islam in Seventeenth-century South Asia*, 32 J. Beliefs and Values 85 (2011).

10. For additional academic works in European languages, *see* Joseph Schacht, An Introduction to Islamic Law (1964); Anwar Ahmad Qadri, *The Fatāwā-yi Ālamgīrī*, 14 J. Pak. Hist. Soc'y 188 (1966); Carl Brockelmann, Geschichte der arabischen Litteratur, I-II 549 (1943–49); Mouez Khalfaoui, *al-Fatāwā al-ʿĀlamgīriyya*, *in* Encyclopedia of Islam, Third Edition (Kate Fleet et al. eds., 2014); A.S. Bazmee Ansari, *al-Fatāwā al-ʿĀlamgīriyya*, *in* Encyclopaedia of Islam, Second Edition (P.J. Bearman ed., 2014); M. Reza Pirbhai, *A Historiography of Islamic Law in the Mughal Empire*, *in* The Oxford Handbook of Islamic Law (Anver M. Emon and Rumee Ahmed, eds., 2016); Ursula Sims-Williams, *'Al-Fatawa al-Alamgiriyyah' Commissioned by Mughal Emperor Aurangzeb Became the Cornerstone of Islamic Law in British India*, New Age Islam (Apr. 28, 2020), https://www.newageislam.com/books-documents/%20rsula-sims-williams/al-fatawa-al-alamgiriyyah-commissioned-mughal-emperor-aurangzeb-became-cornerstone-islamic-law-british-india/d/121782. For examples from the more extensive treatment of the *Fatāwā Hindīyya* in Arabic, Turkish, and Urdu too large to cite exhaustively here, *see, e.g.*, Aḥmad Maḥmūd al-Sādātī, Tārīkh al-Muslimīn fī shibh al-Qārra al-Hindīyya wa Ḥaḍāratuhum II 197, 259 (1958–59); Muwsuʿat al-Fiqh al-Islāmī, I 55–56 (1386–1422/1966–2001); Ahmet Özel, *el- ÂLEMGİRİYYE*, Türkiye Diyanet Vakfı İslam Ansiklopedisi, 2. Cilt 365–66 (2013), https://islamansiklopedisi.org.tr/el-alemgiriyye (accessed Mar. 5, 2025); Ali Himmet Berki, *Fetâvâyı Âlemgiriyye*, İslâm-Türk Ansiklopedisi, I, 277 (1360–63/1941–44); Hayreddin Karaman, *Âlemgiriyye*, İslâmî Bilgiler Ansiklopedisi, I, 169 (1981); Muḥammad Isḥāq, *Fatāwā Ālamgīrī*, Urdū Dāʾireh-i Maʿārif-i Islāmīyya, XV 145–55 (1964–89).

author's knowledge the most significant studies to date examining these questions are Alan Guenther's (2003) chapter in the edited volume by Richard Eaton, *India's Islamic Traditions: 711–1750*, which provides a valuable summary of the text's compilation history, organization, and major features; Muhammad Khalid Masud's (2016) article discussing the "official" status of the text in the Ḥanafī *madhhab* and in late Mughal India; and most recently, a seminal article in 2020 by Muhammad Zubair Abbasi published in *Islamic Studies* which remains the most instructive and thoroughly researched article in English to date.[11] Utilizing the surviving works by court historians of the late Mughal period, including Khafī Khān's contemporaneous account of the work's compilation, and Mughal chronicler Muhammad Sāqī Mustaʿid Khān's subsequent account of Awrangzīb's reign *Māsir-i ʿĀlamgīrī*, Guenther, Masud, and Abbasi provide the most detailed discussion of the production, contents, and founding history of the unprecedented project. Aside from the key sources consulted in the formation of the compendium, and the estimated 500 scholars who participated in the *Fatāwā Hindīyya's* compilation, the intellectual history behind the text, and the social backgrounds of its compilers, are still not well known. Beyond a small number of encyclopedic entries touching upon these subjects in brief, there has also been relatively scarce treatment of the compendium's legacy in the production of subsequent codes of law in the Islamicate world, which we turn to in the final section of this Article.[12]

A. Continuity and Change in Islamic Legal History: Jurists, Rulers, and the Problem of Codification

Contrary to hackneyed notions of the shariʿa as a fixed set of ahistorical religious edicts, Islamic legal interpretation (*fiqh*) as a discursive tradition adapted to the evolving social and political conditions of societies that Muslims historically inhabited, and often, governed. Hence understanding the historical development of Islamic law requires grasping the role of its authorized interpreters and actual implementation by rulers *in* history. The formation of Islamic scholars (*ʿulamāʾ*)—and more specifically, the *fuqahāʾ* (jurists)—as an expert class who participated in the formulation of laws, courts of justice, and administrative

11. Alan M. Guenther, *Ḥanafī Fiqh in Mughal India: The Fatāwā-yi Ālamgīrī*, *in* India's Islamic Traditions, 711–1750 (Richard Eaton ed., 2003); Muhammad Khalid Masud, *Religion and State in Late Mughal India: The Official Status of the Fatawa Alamgiri*, 3 LUMS L.J. 32 (2016); Muhammad Zubair Abbasi, *Al-Fatāwā al-ʿĀlamgīriyyah*, 59 Islamic Studies 451 (2020). For additional relevant books in South Asia and Middle East history that engage the text beyond a passing mention, *see* Brian Wright, A Continuity of Shariʿa: Political Authority and Homicide in the Nineteenth Century 13, 23, 27, 61, 138 (2023); Nandini Chatterjee, Negotiating Mughal Law: A Family of Landlords across Three Indian Empires (2020); Guy Burak, The Second Formation of Islamic Law: The Ḥanafī School in the Early Modern Ottoman Empire (2015); J. Duncan M. Derrett, Religion, Law and State in India (1999); Jamal Malik, Islam in South Asia: A Short History (2008).

12. *See, e.g.*, Khalfaoui, *supra* note 10; Ansari, *supra* note 10; Özel, *supra* note 10; Berki, *supra* note 10; Karaman, *supra* note 10; Pirbhai, *supra* note 10.

regulations took place side-by-side with new dynastic claims put forward by the post-Rashidun monarchs, along with the historical development of Islam's earliest schools of *fiqh*.[13] During the late Umayyad and Abbasid imperial consolidation in particular, often Muslim dynastic rulers or even governors were reluctant to compromise their political authority with that of the jurists.[14] At the same time, Arab-Islamicate courts engaged and adapted Persianate, Byzantine, Turko-Mongolian and other political and administrative cultures including theories of dynastic kingship—a complex and drawn out process that unfolded over centuries following the Rashidun period. Through this process Sunni ʿulamāʾ developed a normative arrangement whereby Muslim hereditary rulers were no longer viewed as personal embodiments of the Islamic *moral-political* order as established in the first Muslim community at Medina and the Rashidun caliphs immediately after. Instead, dynastic Muslim rulers were viewed as guarantors of a stable public *civil-political* order in their holding the *office* of the executive, irrespective of their individual piety or orthodoxy and whether bearing the title of caliph, sultan, shah, khan, amir, or similar monarchical claims.[15]

In medieval Islamicate societies, the negotiated relationship between sultans, viziers, scholars, commanders and other social, political, and military

13. Hallaq, *supra* note 3; Ahmed El Shamsy, The Canonization of Islamic Law: A Social and Intellectual History (2013); Intisar A. Rabb & Abigail Krasner Balbale, Justice and Leadership in Early Islamic Courts (2017); Knut S. Vikør, Between God and the Sultan: A History of Islamic Law 89–139 (2005). Here the Article's focus is on Sunni juristic traditions and schools of law (*maddhabs*), especially the Ḥanafī school, although several parallel developments occurred within Shiʿi schools of law especially following the ninth and tenth centuries CE.

14. Muhammad Qasim Zaman, Religion and Politics under the Early ʿAbbāsids: The Emergence of the Proto-Sunnī Elite 70–78 (1997).

15. *Id.* At 78–85. On the mutual influence and synergy between Arab-Islamicate political administrations Persianate court cultures, for example, *see* Saïd Amir Arjomand, *Perso-Islamicate Political Ethic in Relation to the Sources of Islamic Law*, *in* Mirror for the Muslim Prince: Islam and the Theory of Statecraft 82 (Mehrzad Boroujerdi ed., 2013) and Alireza Shomali & Merhzad Boroujerdi, *Saʿdi's Treatise on Advice to the Kings*, *in* Mirror for the Muslim Prince: Islam and the Theory of Statecraft 45 (Mehrzad Boroujerdi ed., 2013). On late medieval and early modern conceptions of caliphate, imamate, and Muslim kingship more broadly, including the synthesis of Turko-Mongolian models of sovereignty within an Islamic juristic-spiritual framework embracing both the shariʿa and Sufism, *see* Aziz Al-Azmeh, Muslim Kingship: Power and Sacred Muslim, Christian, and Pagan Politics (2001) and A. Azfar Moin, The Millenial Sovereign: Sacred Kingship and Sainthood in Islam (2014); Jonathan AC Brown, *The Last Days of al-Ghazzālī and the Tripartite Division of the Sufi World: Abū Ḥāmid al-Ghazzālī's Letter to the Seljuq Vīzier and Commentary*, 96 The Muslim World 89 (2006). On theories of the caliphate and imamate, and their evolution from early modern to contemporary times, *see* Hugh Kennedy, Caliphate: The History of an Idea (2016); Mona Hassan, Longing for the Lost Caliphate: A Transregional History (2016); Hüseyin Yilmaz, Caliphate Redefined: The Mystical Turn in Ottoman Political Thought (2018); Cemil Aydin, The Idea of the Muslim World: A Global Intellectual History (2017); Demystifying the Caliphate: Historical Memory and Contemporary Contexts (Madawi al-Rasheed et al. eds., 2012).

authorities constituting the society's juridical field—combined with the already diffuse and decentralized nature of state authority in that era—attenuated the historical process of subordination of the legists from a strictly "moral community" to a professional judicial class, a phenomenon of a later era.[16] Though a growing number of ʿulamāʾ would eventually accept, if not pursue, state appointments as *qāḍīs* (judges) in the official administrations of these empires during the late medieval era, still, many influential jurists preferred to retain their independence from the state. Opting to serve in a variety of "private" juridical positions comprising legal advisors, law professors, author-jurists, or juriconsults (muftis), these *fuqahā'* (literally, those skilled in the science of *fiqh*, or Islamic jurisprudence), preserved a degree of autonomy from the ruler, establishing a scholar-sultan dialectic that characterized much of the power relations between the ʿulamāʾ and rulers during this early period of Islamic legal history.[17]

Scholar-sultan dialectics, including tensions and even confrontations, are only part of the story, however. As Muhammad Qasim Zaman and Sohaira Siddiqui have observed, sultans claimed a legitimate role in determining select matters of law and administration, especially those concerning public safety and order, equity in the markets, and defense of the realm. This discretionary authority had been theoretically recognized by Sunni ʿulamāʾ since at least the rule of the Abbasids.[18] In practice, however, after the era of the Rashidun caliphs Muslim rulers occupied largely symbolic offices, distant from their earlier roles as authoritative juridical experts in their own right. As sultans grew detached from what was increasingly becoming a specialized field of legal knowledge, they were expected to surround themselves with competent jurists who would assist them in addressing complex legal matters.[19] Some sultans would use this arrangement to devise their own administrative regulations, or *qānūn*, to govern daily affairs in the empire.

It should be noted, however, that the ruler's prerogative to draft and enforce *qānūn* did not extend to comprehensive civil or criminal law "codes" in the modern sense of the term, with the production of law remaining a non-codified monopoly of the traditional schools of law (*madhhabs*) and jurists working within them. One of the first failed attempts at a systematic "codification" of law in this regard was by the Abbasid secretary of state Ibn al-Muqaffa (d. 759).

16. 16. Pierre Bourdieu, *The Force of Law: Towards a Sociology of the Juridical Field*, 39 Hastings L.J. 805 (1987).

17. Hallaq, *supra* note 3, at 164–83; Noah Feldman, The Fall and Rise of the Islamic State 21–35 (2008). On change and continuity to scholar-ruler power relations during the early modern to late Ottoman period, *see* Abdurrahman Atçil, Scholars and Sultans in the Early Modern Ottoman Empire (2017); Amit Bein, Ottoman Ulema, Turkish Republic: Agents of Change and Guardians of Tradition (2011).

18. Zaman, *supra* note 8, at 120–24; Sohaira Z.M. Siddiqui, Law and Politics under the Abbasids: An Intellectual Portrait of al-Juwayni (2019).

19. Hallaq, *supra* note 3, at 43–44.

As Sherman Jackson has noted, this was probably the most famous, albeit short-lived, attempts at a comprehensive law code until the Ottoman *Mecelle* of the late nineteenth century.[20] Ottoman legal historians familiar with the vast early modern *kanunname* literature, such as Ahmed Akgündüz, would probably differ here, citing a number of the Sublime Porte's *kanunnames* in the seventeenth or even sixteenth century as premodern "codes" of law. Yet, this just as often raises questions of semantics rather than identifying and analyzing comparable historical processes taking place across often vast geographic, linguistic, and political barriers during this period.

B. The Fatwa Collection as Genre

Despite its name the *Fatāwā Hindīyya* should not be understood as a compilation of ad hoc fatwas (in the conventional understanding of expert answers to specific questions). Rather, the compendium belongs to the Indian and central Asian tradition of fatwa *collections*, or restatements of the authoritative doctrine of the Ḥanafī school of Islamic jurisprudence. As Mona Siddiqui has observed,

> Although the book bears the title *Fatāwā*, it is not as the name suggests a book of legal responses to specific questions. It is a book of *fiqh* where the primary aim is to elucidate principles and rules of Ḥanafī law by presenting legal problems quoted verbatim from a wide selection of authorities within the Ḥanafī school on all the subjects generally covered within the *fiqh* tradition.[21]

In this sense the *Fatāwā Hindīyya* follows an established Indian and Central Asian usage of the term "fatwa" to connote not the conventional understanding of a jurisconsult's opinion in response to an individual Muslim's specific question or highly contextualized fact pattern, but rather the authoritative and dominant position (*ẓāhir al-riwāya*, or *al-muftā bihi*) of the Ḥanafī school for application on a broader societal scale.[22] The two distinguishing historical features of

20. Sherman A. Jackson, Islamic Law and the State: The Constitutional Jurisprudence of Shihab al-Din al Qarafi xviii (1996).

21. M. Siddiqui, *Law and Desire for Social Control*, *supra* note 6, at 50. For an overview of this historical genre in South Asia, *see* Zafarul Islam, *Origin and Development of Fatāwā Compilation in Medieval India*, 12 Stud. in Hist. 223–41 (1996).

22. Here it is useful to outline the three general genres of Ḥanafī legal texts. As summarized by Muhammad Zubair Abbasi, they comprise: (1) *Ẓāhir al-riwāya*, also known as *Uṣūl al-madhhab* (Foundational Sources of the School of Jurisprudence) and *al-muftā bihi* (Those texts on which fatwas are based), refers to the predominantly accepted view in the Ḥanafī school, as contained in six of the canonical law books of the Ḥanafī school of jurisprudence. Authored by Muḥammad Ḥasan al-Shaybānī (d. 804), one of the two preeminent students and intellectual heirs of the founder of the school, Abū Ḥanifa (d. 767). Together these books constitute the foundational references for the school and include *al-Mabṣūt*, *al-Jāmiʿ al-Ṣaghīr*, *al-Jāmiʿ al-Kabīr*, *al-Siyar al-Ṣaghīr, al-Siyar al-Kabīr* and *al-Ziyādāt*. (2) *Nādir al-riwāya* or *Nawādir*, on the other hand, signifies a minority or abrogated view, albeit possibly even held by the founder of the Ḥanafī school himself or his two chief disciples, Muḥammad Ḥasan al-Shaybānī and Qāḍī Abū Yūsuf (d. 798). (3) Finally, a third category of Ḥanafī legal texts is the fatwa compilation, also known as *Fatāwā, Wāqiʿāt, or Nawāzil*, which contain

late medieval fatwa collections therefore are, first, state sponsorship by an independent Muslim ruler (usually in India, Khorasan, or Transoxiana); and second, authoritative status (*ẓāhir al-riwāya*) in the Ḥanafī school.[23] As we shall see, the *Fatāwā Hindīyya* shares both these features in resounding fashion.

That the *Fatāwā-yi ʿĀlamgīrī* emerges from a long line of pre-modern Indian and Central Asian fatwa collections is evident not only in its naming after the ruler or prince who patronized its production.[24] Such eponymous traditions are commonplace and widespread globally, after all, from Justinian and Süleyman to Napoleon and Simon Bolivar, signalling the imperial backing and prestige of a particular legal text in the realm. At least eleven major Indian fatwa collections from the late medieval and early modern period have been identified in this regard. Of them the most important are the *Fatāwā-yi Ghiyāthīyya*, dedicated to the Mamluk ruler of northern India, Ghiyāth al-Dīn Balban (1265–1287); the *Fatāwā Qarākhānīyya*, compiled by Maqbūl Qarākhān on the order of Sultan Jalāl al-Dīn Fayrūz Shāh Khiljī (1290–1295); the *Fatāwā Tatarkhānīyya* of ʿĀlim ibn ʿAlaʾ Indarpatī (d. 1384), dedicated to Amir Tatarkhān, a deputy of Sultan Ghiyāth al-Dīn Tughlaq (1320–1325); and the *Fatāwā Bāburī* (also known as *Ẓahīrīyya*), dedicated to the first Mughal emperor, Ẓahīr al-Dīn Bābur (1483–1530).[25]

With the advent of Turko-Muslim sultanates in northern India beginning in the eleventh century, the Transoxian and Khorasani ʿulamāʾ who accompanied rulers to the subcontinent brought with them expertise in the Ḥanafī school of jurisprudence, as did the many more who followed. The early Transoxian-Khorasani ʿulamāʾ in India, along with itinerant sufis, pilgrims, and merchants, played an instrumental role in connecting the more established and prestigious centers of Ḥanafī scholarship in the metropolises of Damascus, Baghdad, and Samarqand with the newly found Turko-Persian sultanates of northern India.[26] Over subse-

interpretive doctrines developed by later Ḥanafī jurists addressing new issues not engaged by earlier generations of scholars. It is within this genre that the *Fatāwā Hindīyya* squarely belongs. *See* Abbasi, *supra* note 11, at 456–57. *See also* Masud et al., *supra* note 7, at 200. Finally, the above description of the fatwa collection genre in India and Central Asia does not mean, however, that *all* Indian fatwa collections avoid the conventional question-answer mode. For example, the *Fatāwā Qarakhāni* of Ṣadr al-Dīn Yaʿqūb Muẓaffar Kirmānī, was compiled in question-answer form by Maqbūl Qarakhān, on the order of Sultan Jalāl al-Dīn Fayrūz Shāh Khiljī (1290–95). Masud et al., *supra* note 7, at 14–15.

23. Masud et al., *supra* note 7, at 14–15.

24. *Id.* As Masud, Messick, and Powers observed, "Pre-modern Indian fatwa collections bear the names of rulers, indicating the status of these texts as authoritative opinions potentially enforceable in state courts."

25. Muḥammad Isḥāq Bhattī, Barr-i Ṣaghīr Pāk-o-Hind main ʿIlm-i Fiqh 30 (Lahore, Idārih-i Thaqāfat-i Islamīyya 1973); Masud et al., *supra* note 7, at 14–15; Ahmet Akgündüz, Introduction to Islamic Law 100 (2010).

26. On the history of Turko-Mongolian empires of Turkestan more broadly, *see* Ali Anooshahr, Turkestan and the Rise of Eurasian Empires: A Study of Politics and Invented Traditions (2018); Carter Findley, The Turks in World History (2005), especially chapters 2–4.

quent generations as the ʿulamāʾ of the subcontinent trained their own students, schools, and generations of Hindustani scholars, they also began to produce their "own" authoritative fatwa collections, though still with proud genealogies to earlier canonical texts of the Ḥanafī school from Iraq, Khorasan, and Central Asia, for example. These fatwa collections were selected to address particular needs of the soceities of their time—or as often, the needs of the ruler. As scholars of early modern Ottoman administration like Cornell Fleischer have argued, after the fall of Baghdad and the Abbasid Caliphate in 1258, Turko-Mongolian political rule shaped the development of not only Islamic law in successor states like the Ottomans and Mughals, but also views of the sultan and the institution of Sunni political rule itself. This includes the intertwining and mutual influence of historically urban and "sedentary" notions of law, political orders, and justice in place like Baghdad, Isfahan, and Delhi with nomadic traditions and models of the steppe warrior culture and social organization.[27]

Some historians, and specialists in the medieval Seljuk and Delhi sultanates (and later, early modern Ottoman and Mughal empires) in particular, might therefore link the production of the earliest fatwa collections in Khorasan, Transoxiana, and India to the imperial drive for centralized governance by Turkic rulers who emerged from the hierarchical tradition of Mongolian *yasa*, but sought a legitimizing continuity in Islamic jurisprudence. Examples of such collections was the aforementioned *Fatāwā-yi Ghiyāthīyya*, one of the earliest compilations in this genre being produced in the thirteenth century, as well as the subsequent *Fatāwā-yi Tatarkhānīyya*, the compilation of which was launched during the reign of Fayrūz Shāh Tughluq (r. 1351–88), and completed in 1397; and the aforementioned *Fatāwā-yi Qarākhānīyya* of the thirteenth century.[28] Ottoman legal historian Ahmet Akgündüz points out that the highly regarded sixteenth century legal primer *Multaqa al-Abḥur* by Ibrahīm al-Ḥalabī (d. 1549), which became a staple text for teaching Ḥanafī *fiqh* in Ottoman madrasas, "almost became the official legal code of the Ottoman State that covered criminal law, family law, and in short, all legal issues resembling laws," as cited in a *fermān* of Sultan Murad IV (1623–1640).[29]

It is not the goal of this Article to establish the "first" projects of Islamic legal codification, whether grounded in the historical *fiqh* literature of the Ḥanafī school or any other *madhhab*. Rather the point here is to demonstrate that questions and processes of legal codification, centralization, and modern transformation have deep roots in Islamicate lands and the Turko-Persianate world, and more specifically yet, the region Shahab Ahmed has described as a Balkans-to-Bengal complex.[30]

27. Cornell H. Fleischer, Bureaucrat and Intellectual in the Ottoman Empire: The Historian Mustafa Ali, 1541–1600 273–74 (1986).

28. Akgündüz, *supra* note 25, at 100; Guenther, *supra* note 11, at 215.

29. Akgündüz, *supra* note 25, at 47.

30. In light of their overlapping but not identical geographic locations, temporalities,

II. Production of the Fatāwā-yi ʿĀlamgīrī: Process and Features

It has been established that some common features, and common purposes, bound fatwa collections produced by Ḥanafī jurists from late medieval Transoxiana to early modern Mughal India, up to the promulgation of the *Fatāwā Hindīyya* otherwise known as the *Fatāwā-yi ʿĀlamgīrī*. Among the shared purposes was providing a comprehensive reference for the school's authoritative interpretations of Islamic jurisprudence.[31] But what do we actually know about the early history, authors, and compilation process of the *Fatāwā Hindīyya*?

Given the prodigious work by Ḥanafī jurists to interpret, summarize, and build on the juristic principles, precedents, and compilations of law in their school from eighth century (CE) onward, we can imagine the sheer amount of written material to be consulted by Shāh Awrangzīb ʿĀlamgīr's law commission in the late seventeenth century to have been voluminous. By the time of Awrangzīb's assumption of the Mughal throne, the sheer scale of relevant texts produced within the Ḥanafī school from ʿAbbasid Iraq to Ottoman Anatolia or Syria, including the aggregate gloss and commentary literature produced about them, must have reached vast if not unwieldy proportions.[32]

It is precisely that challenge, and the historical context of consolidating imperial rule over the subcontinent, that most likely explains why late Mughal emperor Awrangzīb ʿĀlamgīr commissioned his grand council of scholars—some 500 ʿulamāʾ are reported to have participated overall, including 300 from India, and 100 from Hijaz and Iraq each.[33] Their mandate: to compile an authoritative and comprehensive compendium of the Ḥanafī school's doctrine on the range of issues facing an early modern ruler in India. Most academic studies on the *Fatāwā-yi ʿĀlamgīrī* put the work of the commission at roughly eight to ten years.[34] Completed towards the end of Awrangzīb's reign when Mughal territorial expansion across India reached its zenith, Mughal historians have offered varying interpretations of Awrangzīb's motives for launching such an ambitious legal project. Some have stressed a two-prong desire to facilitate effi-

---

and meanings, I will use the regional and historic terms "greater Islamicate world," "Balkans-to-Bengal", "Turko-Persia", and "Persianate world" somewhat interchangeably in this Article. On the Balkans-to-Bengal concept, and its problems when employed ahistorically, *see* Shahab Ahmed, What Is Islam? The Importance of Being Islamic 33–81 (2016). On medieval to early modern Turko-Persia, *see* Robert L. Canfield, Turko-Persia in Historical Perspective (1991); Marshall G.S. Hodgson, The Venture of Islam, Volume 2: The Expansion of Islam in the Middle Periods (1977); Findley, *supra* note 26; Anooshahr, *supra* note 26. On the Persianate, *see* The Persianate World: The Frontiers of a Eurasian Lingua Franca (Nile Green ed., 2019).

31. Zaman, *supra* note 8, at 201–21; Guenther, *supra* note 11, at 214–15.

32. Zaman, *supra* note 8, at 220; Guenther, *supra* note 11, at 210.

33. Masud, *supra* note 11.

34. Guenther, *supra* note 11; Ansari, *supra* note 10; Khalfaoui, *supra* note 10; Masud, *supra* note 11.

cient administration of the empire, coupled with an "Islamicization" of the state according to his own favored interpretive principles.[35] In a similar vein, Muhammad Qasim Zaman has argued that administrative streamlining and efficiency amid an expanding network of provincial law courts and juridical actors were the driving forces behind this centralizing project, citing the rationalizations offered in the original preface of the work. "[T]he justification that was in fact offered," observes Zaman, "concerned precisely the need to make judicial practice *less varied* and more firmly entrenched in the opinions of the best and most widely accepted authorities in the Ḥanafī school of law."[36]

As for the chief compilers of the text, probably between forty and fifty core authors worked closely together, in hierarchical arrangement and overseen by a certain Shaykh Niẓām (d. 1679) of Burhānpūr, from the Khandesh region east of Gujarat. Under the editor-in-chief were subordinate editors assigned to a corresponding number of sections and topics of the law, each editor bearing responsibility to Shaykh Niẓām for any errors in their respective section. Ansari notes that the chief editor employed four superintendents: Shaykh Wajh al-Dīn of Gopamaw, Shaykh Jalāl al-Dīn Muḥammad of Machlishehr, Qāḍī Muḥammad Ḥusayn and Mullah Ḥamīd (or Ḥāmid), both of Janpur.[37] Each of these deputy editors then had a team of lower-rank ʿulamāʾ alongside them, supplemented by secretaries, scribes, and assistants. Based on this model, Khalfaoui and Guenther estimate between forty and fifty scholars participated in the production of the *Fatāwā Hindīyya*.[38]

Though Khafī Khān's early historical account attributes ʿulamāʾ participants to be primarily from the Mughal imperial centers of Delhi and Lahore, Guenther's research cites contemporaneous historical texts to argue the commission was drawn from a much wider swath of Islamicate India. The strength of the geographically diverse recruitment of experts was that it combined the specializations of numerous scholars in various aspects of Islamic law, including those with substantial experience in the legal and administrative bureaucracy of the empire. As Guenther aptly observes, "The result of such diversity as the records appear to indicate is that no localized clique dominated the work with its particular interpretation of the Shariʿah, and that different scholars contributed their eclectic perspectives to insure a well-balanced presentation of Ḥanafī fiqh."[39]

35. Guenther, *supra* note 11, at 212.

36. Zaman, *supra* note 8, at 20. For the original passage cited, *see* FH-2002, at 5–6. *See also* Abbasi, *supra* note 11, at 452; Barbara Daly Metcalf, Islamic Revival in British India: Deoband, 1860–1900 22–23 (1982).

37. Ansari, *supra* note 10.

38. Mouez Khalfaoui, *Together but Separate: How Muslim Scholars Conceived of Religious Plurality in South Asia in the Seventeenth Century*, 74 Bulletin of the School of Oriental and African Studies 87 (2012); Guenther, *supra* note 11.

39. Guenther, *supra* note 11, at 218.

Still, even with its diverse commission of jurists and Shaykh Niẓām appointed as editor-in-chief, it should not be forgotten that at the helm of the *Fatāwā-yi ʿĀlamgīrī* compilation project was no less than its chief patron himself, Shāh ʿĀlamgīr himself. Indeed, Awrangzīb appears to have taken an active, even interventionist, role in the project—appointing, dismissing, and even at times purportedly correcting commission members.[40]

As a project of domestic statecraft with imperial patronage, participating ʿulamāʾ received generous remuneration for their services. Historians of the late Mughal empire and even British Raj have traced *madād-i maʿāsh* land grants from the time of Awrangzīb linking the establishment and hereditary inheritance of large estates across northern India to an ancestor's participation in the original *Fatāwā-yi ʿĀlamgīrī* commission. Some ʿulamāʾ used these land grants to found semi-independent madrasas of their own in provincial areas, as with Shāh ʿAbd al-Raḥīm of Delhi, who went on to found the historic *Madrasa-i Raḥīmīyya*—an institution that trained the towering Indian Muslim scholar of the seventeenth century, Shāh Walī Allāh al-Dihlawī (1703–1762).

The descendants of another scholar who participated in the compilation of the *Fatāwā-yi ʿĀlamgīrī*, Mullah Quṭb al-Dīn of Sihalwi (d. 1691), were also awarded with an estate in Lucknow, Awadh, that eventually became home to the famous *Firangi Mahal* madrasa—arguably northern India's preeminent Sunni institution of learning in the seventeenth century.[41] In this way Mullah Quṭb al-Dīn's contributions to the *Fatāwā Hindīyya* commission benefitted not only his familial descendants, but supported Muslim scholarly activities across northern India and as far as Afghanistan for generations to come.[42]

A. Organization of the Text

The *Fatāwā-yi ʿĀlamgīrī* opens with a brief introduction (*muqaddima*) addressing the definition, importance, and virtues of *fiqh*, or Islamic jurisprudence. It also synopsizes the development of the science of *fiqh* and the role of its preeminent founders and custodians, from Abū Ḥanīfa (d. 767) himself and his celebrated students Abū Yūsuf (d. 798) and Muḥammad al-Shaybānī (d. 805), to the leading extant works of the day in the Ḥanafī *madhhab* during the period of compilation, including the authoritative interpretive tools and methodologies adopted by the school.[43]

40. Guenther, *supra* note 11, at 213–14.

41. Francis Robinson, The ʿUlama of Farangi Mahal and Islamic Culture in South Asia 22 (2001).

42. Metcalf, *supra* note 35, at 29–30; Guenther, *supra* note 11, at 219.

43. FH-2002, at 5–6. A longer and valuable translator's introduction can be found in Sayyid Amīr ʿAlī, Fatāwā-yi Hindīyya, al-maʿrūf bih Fatāwā-yi ʿĀlamgīrīyya, which includes an elaboration of the primary sources consulted from the Ḥanafī school of jurisprudence in the compilation of the text, including titles of works and their authors, followed by a lengthy overview of Ḥanafī *Uṣūl al-fiqh* (principles of jurisprudence), including the important and

As Alan Guenther and Muhammad Zubair Abbasi have examined in their studies of the compilation's organization, at least 124 sources are cited in total, covering the major canonical works of the Ḥanafī *madhhab*. Similar to the arrangement of subjects in the classic Ḥanafī texts, *al-Jāmiʿ al-Ṣaghīr* of al-Shaybānī or the *Hidāya* of al-Marghinānī, the *Fatāwā Hindīyya* is comprehensive in scope and ambition.[44] Visible in the wide arrangement of subjects classified by chapter and sub-section, the comprehensive scope and organization must have been to provide an accessible reference guide for qāḍīs in their day-to-day judicial administration, as well to assist future muftīs for conceivable topics on which new judgments might be necessary.[45]

Hence the compendium clearly draws from earlier fatwa collections, illustrating the cumulative nature of this genre of legal literature and as well as their potentially large size. Roughly four times the length of al-Marghinānī's *Hidāya*, however, the *Fatāwā Hindīyya* surpasses the former in terms of breadth of cases covered. Beyond this quantitative difference, there are also unique characteristics of a qualitative nature. The *Fatāwā Hindīyya* bears the additional distinction of providing a comprehensive restatement of the major canonical texts of the Ḥanafī school (up to that time), including even those produced before and since al-Marghinānī's magnum opus. Among these works are also the aforementioned late medieval fatwa collections from Central Asia, including the thirteenth century *Fatāwā-yi Ghiyāthīyya* and *Fatāwā-yi Qarākhānīyya*, and *Fatāwā-yi Tatarkhānīyya* of the fourteenth century.[46]

While the *Fatāwā Hindīyya* includes traditional aspects of Indo-Transoxian fatwa collections, it also introduces new features bearing a distinctive quality for this genre of Ḥanafī legal texts. The most significant are additional chapters on judicial proceedings and decrees (*muḥādir wa al-sijillāt*), legal forms (*shurūṭ)*, legal devices (*ḥīyal)*, and rules of inheritance (*farāʾid)*. Unlike the fifty-seven other sections, the new chapters deal with issues of judicial procedure, thereby indicating a novel aspect of the compendium and bringing it a step closer to modern notions of a legal "code."[47]

B. Content and Implementation

Beyond the substantive provisions on conventional topics of *fiqh* manuals—rites of worship, marriage, divorce, inheritance, and some aspects of criminal law, torts, and property disputes—we might imagine of particular importance to a centralizing monarch like Awrangzīb were sections on qualifications of

controversial topics of abrogation (*naskh*), juriconsulting (*iftāʾ*) and associated interpretive tools and methodologies.

44. Guenther, *supra* note 11, at 215; Abbasi, *supra* note 11, at 457.
45. Guenther, *supra* note 11, at 214–15; Abbasi, *supra* note 11, at 470–74.
46. Guenther, *supra* note 11, at 214–15; Abbasi, *supra* note 11, at 456–59.
47. Guenther, *supra* note 11, at 214–15; Abbasi, *supra* note 11, at 458–59.

the judge, and more broadly, *Uṣūl al-fiqh* (principles of Islamic jurisprudence). These sections were likely intended to curb the discretion of individual *qāḍīs* in the emperor's courts with the goal of producing consistency, controllability, and the coveted prize of centralizing governments: efficiency. For example, in the section on *Adab al-Qāḍī* (Protocols for Judges), the text addresses the necessary skills, responsibilities, and etiquettes or best practices of a judge from the perspective of Ḥanafī *fiqh*, but with an awareness of contemporary needs and societal interests from a seventeenth century Mughal administrator's perspective.[48]

When it comes to the practical impact of the administration of justice on the ground in the late Mughal empire, our sources are limited and historical scholarship on this area of law-in-action versus law-on-the-books remains scarce, at least in comparison to the better studied Ottoman domains in the same period. Some scholars have emphasized the still largely decentralized and pluralistic approach to Islamic law that reigned until the onset of British colonial rule. Muhammad Qasim Zaman, for example, notes that even as the compilers of the *Fatāwā Hindīyya* expressed a commitment to upholding the most authoritative view of the Ḥanafī school, "the actual practice of the shari'a in precolonial India, as indeed elsewhere, allowed for considerable flexibility in determining how that law would be implemented."[49]

As for constraining the actions of the executive, Mughal historian Munis Faruqui has observed "there are few indications that the *Fatāwā-yi ʿĀlamgīrī* ever circumscribed or even influenced Awrangzīb's political actions."[50] Perhaps the same point could extend even to the judicial actions of his own judges. It should not be surprising that individual qāḍīs within Mughal India continued to have a largely discretionary role even after the compendium. This was a result of intensifying centrifugal forces in the late Mughal empire as much as it was the continuation of an accumulated Islamic juridical tradition that proved remarkably sensitive and adaptive to local social and cultural contexts and lived experience. In this way, the immediate impact of the *Fatāwā-yi ʿĀlamgīrī* should not be overstated. After all, the compendium was only one of multiple sources of law available to to late Mughal qāḍīs, muftīs, and other juridical personnel well after its publication. Other sources of adjudication included further acts promulgated by the same emperor like the *Ḍawābiṭ-i ʿĀlamgīrī*, but also more diffuse legal cultures like *ʿurf* and *ʿāda* (regular local custom), or the older aforementioned texts of the Ḥanafī canon which continued to enjoy a revered status in the school.[51] Legal pluralism,

48. Guenther, *supra* note 11, at 223; Siddiqui, *Law and Desire for Social Control*, *supra* note 6, at 62–63.

49. Zaman, *supra* note 8, at 21.

50. Munis D. Faruqui, *Awrangzīb*, *in* Encyclopedia of Islam, Third Edition (Gudrun Krämer et al. eds., 2011).

51. Guenther, *supra* note 11, at 223; Bernard S. Cohn, *Law and the Colonial State in India*, *in* History and Power in the Study of Law: New Directions in Legal Anthropology

in other words, was hardly effaced by the centralizing and uniformizing impetus of the statist project. As Muhammad Qasim Zaman has observed,

> Despite their apparent mandate to reduce the fluidity (or uncertainty) of legal opinions, even the compilers of the *ʿĀlamgīriyya* did little to try to harmonize the diversity of opinions in the Ḥanafī legal tradition. A variety of differing opinions are routinely noted in this compilation—as indeed manuals of *fiqh* (Islamic law) generally—giving the judges as well as the Muftis considerable choice in dealing with the cases brought to them. It was in the presence of such divergences of opinion (*ikhtilāf*) that the jurists found the freedom to adjust the law and its application to changing times.[52]

These observations should give us reason to pause before describing the *Fatāwā Hindīyya* as an early modern legal "code." While no doubt presenting a serious attempt at streamlining judicial and administrative processes of the Mughal state under emperor Awrangzīb, there is little evidence the compendium became the sole reference for adjudication to the exclusion of others texts or sources of law. There is also little evidence to suggest it curtailed the thriving legal pluralism in India in the ways that would become characteristic of British colonial rule and the transformative impact of codification projects launched roughly a century later under the aegis of "Anglo-Muhammadan law."

Still, the limited historical record we have of late Mughal judicial administration after the *Fatāwā Hindīyya* demonstrate that the compendium did reflect an attempt on the part of Shāh Awrangzīb to reshape the legal system according to his own vision of a more uniform rule of law in practice, bound by the shariʿa in theory and following the legal interpretation of his commissioned scholars working within the Ḥanafī *fiqh* tradition in practice. In that respect, Awrangzīb's *Fatāwā Hindīyya* could be seen as a nascent, early modern "proto-code" of Islamic law, roughly one and a half to two centuries before legal codification projects launched by the Sublime Porte in Istanbul or by Afghan amirs in Kabul, a theme we return to in the final section of the Article.

Though originally published in Arabic, it is also important to note that the *Fatāwā Hindīyya* was early on translated into Persian, the official language of administration in the Mughal courts.[53] That the *Fatāwā Hindīyya* was translated into Persian soon after its compilation indicates an intended use not only for high-level muftis, Ḥanafī legal theorists, and other elite scholars fully proficient in Arabic, but for more ordinary judges and legal personnel spread out across the vast Mughal judicial landscape. For similar reasons Urdu and English

131–52 (June Starr & Jane F. Collier eds., 1989).

52. Zaman, *supra* note 8, at 20.

53. Remarkably, it is unclear whether the Persian translation was actually completed as no original copy appears to have survived. Guenther, *supra* note 11, at 215–16. Wright also notes that Indian scholars Najm al-Din ʿAli Khan (d. 1814) and his son Muhammad Khalil al-Din Khan translated sections on criminal law in the *Fatāwā al-Hindīyya* into Persian. Wright, *supra* note 11, at 27.

translations emerged in the nineteenth century. Sayyid Amīr ʿAlī of Lucknow (d. 1919), a distinguished scholar and author of Qurʾanic and Hadith commentaries as well as works of *fiqh*, was the first to translate and publish the compendium in Urdu.[54] The notable British jurist Niel Baillie (d. 1883) translated portions of the compendium into English.

In fact, Baillie lamented the fact that the East India Company and later British imperial courts in India chose to adopt al-Marghinānī's *Hidāya* instead of Shah Awrangzīb's groundbreaking compilation in their production of the Anglo-Muhammadan law codes. The *Fatāwā-yi ʿĀlamgīrī*, Baillie argued, had the advantage of being compiled more recently, in India, and under the authority of a renowned Hindustani Muslim ruler. The *Hidāya* on the other hand, while also universally revered among Ḥanafīs, was centuries older and appeared to display the medieval "birthmarks" of production in twelfth century Transoxiana by comparison.

Over time, the *Fatāwā Hindīyya* would eventually gain a sterling reputation as a canonical text of Islamic jurisprudence within the later Ḥanafī school, and more broadly, among jurists and rulers in the greater Islamicate world. On this subject the Article concludes with remarks on the often overlooked legacy of the *Fatāwā Hindīyya* in the nineteenth century Ottoman Empire and Afghanistan—two "sister" Ḥanafī jurisdictions where the compilation became a prominent reference for lawmakers and administrators carrying out their own centralization campaigns in the nineteenth and early twentieth centuries.

III. Modern Legacies of the Fatāwā-yi ʿĀlamgīrī

Late Mughal scholars and administrators were not the only officials to translate Shāh Awrangzīb ʿĀlamgīr's compendium from the original Arabic into Persian for wider usage in Indian law courts. Roughly a century after its compilation, subsequent study and renderings of the *Fatāwā Hindīyya* into Persian, Urdu, and English versions were part and parcel of British imperial strategy of designing a hybrid Anglo-Muhammadan law for application in their own courts in the subcontinent. That the *Hidāya* and *Fatāwā-yi ʿĀlamgīrī* were two of the most frequently used Ḥanafī texts in Anglo-Muslim jurisprudence and British Indian courts of law constitutes one of the more well-known modern legacies of the compendium.[55] This was not an isolated development. Beginning in the late eighteenth and throughout the nineteenth century European colonial officials from the French Maghreb and British India to Dutch Southeast Asia compiled

54. He is not to be confused with the also prominent and contemporaneous Indian Muslim scholar-journalist, Amir Ali (d. 1928), author of *Spirit of Islam*.

55. Muhammad Khalid Masud, *Apostasy and Judicial Separation in British India*, *in* Islamic Legal Interpretation: Muftis and their Fatwas 200 (Khalid Muhammad Masud et al. eds., 1996).

an array of Islamic legal manuals and codes, often collaborating with Orientalist scholars and local elites in the process.[56]

While often touting attempts to respect local customs or even preserve Islamic heritage, such colonially engineered digests as the Anglo-Muhammadan Law and Droit musulman-algérien produced an even bolder invention: "Sharia Law."[57] As a number of historians of the post-Ottoman Middle East and North Africa, British India, and Southeast Asia have observed, in this new colonial rendition, "Sharia Law", "sharia codes", or even "Muslim law" and "Islamic law" became new entirely legal categories and constructs. Not just technical terms, they signified the transformation of a wider sociolegal world of human problems which qāḍīs, muftīs, the discursive *fiqh* tradition, or even the ʿulamāʾ in general historically engaged into a far more narrow and instrumental area of substantive law. That scope essentially constituted family and personal status law, leaving systematic processes of governance and administration to the new colonial regimes. Over time colonial codification projects served to undermine or arguably even dismantle the shariʿa from a broader constellation of institutions, social norms, and juristic vocabularies deeply rooted in Islamicate societies, in order to centralize and consolidate rule over large Muslim populations.[58]

While it is important not to collapse substantial historical differences between Mughal imperial rule and British colonialism in India, and the *Fatāwā-yi ʻĀlamgīrī* can hardly be described as a colonial project, the possibility that such an expansive top-down attempt at compiling a legal reference for judges

56. *See, e.g.*, Hallaq, *supra* note 3, at 357–70; Bernard S. Cohn, Colonialism and Its Forms of Knowledge: The British in India 57–75 (1996); Elizabeth Kolsky, *Codification and the Rule of Colonial Difference: Criminal Procedure in British India*, 23 L. and Hist. Rev. 631 (2005); Talal Asad, Formations of the Secular: Christianity, Islam, Modernity 205–56 (2003); Hussin, *supra* note 4; and Yahaya, *supra* note 4. For a succinct overview of European projects to codify Islamic law as a strategy of imperial rule, *see* Wael B. Hallaq, An Introduction to Islamic Law 85–93, 110–14 (2009). For notable examples in modern South Asia historiography, *see* Cohn, *supra* note 51; Sanjay Nigam, *Disciplining and Policing the 'Criminals by Birth*, 27 Indian Econ. and Soc. Hist. Rev. 131 (1990); Radhika Singha, *'Providential' Circumstances: The Thuggee Campaign of the 1830s and Legal Innovation*, 27 Mod. Asian Stud. 83 (1993); Janaki Nair, Women and the Law in Colonial India (1996); Uday Singh Mehta, Liberalism and Empire (1999); Scott Kugle, *Framed, Blamed and Renamed: the Reshaping of Islamic Law in Colonial South Asia*, 35 Mod. Asian Stud. 257 (2001); Nasser Hussain, The Jurisprudence of Emergency: Colonialism and the Rule of Law (2003); and Nicholas Dirks, Scandal of Empire: India and the Creation of Imperial Britain (2006).

57. Lena Salaymeh, *Decolonial Translation: Destabilizing Coloniality in Secular Translations of Islamic Law*, 5 J. of Islamic Ethics 1-2 (2021).

58. See works cited in prior footnote. It is also important to emphasize such processes of centralization were not limited to European or colonial contexts, as is clear from codification campaigns in the late Ottoman Empire and Afghanistan in the late nineteenth to early twentieth centuries. *See, e.g.*, Faiz Ahmed, *In the Name of a Law: Islamic Legal Modernism and the Making of Afghanistan's 1923 Constitution*, 48 Int'l J. Middle East Stud. 655, 668 (2016); Amin Tarzi, *Islam and Constitutionalism in Afghanistan*, 5 J. Persianate Stud. 205 (2012); Colin Imber, The Ottoman Empire, 1300–1650: The Structure of Power (2002).

throughout the Mughal Empire could unleash havoc on local and historically decentralized modes of dispute resolution in India needs to also be reckoned with. As legal historian Nurfadzilah Yahaya has aptly put it, "Law is a weapon, often wielded to stamp out rivals."[59]

Nor should we limit the influence of the compendium to British colonial institutions officials and courts or the so-called Anglo-Muhammadan law. Rather, another longstanding legacy of the compendium is evident in the status accorded to the text in the Ḥanafī school of Islamic jurisprudence from the late Mughal era, through the last century of the Ottoman Empire, and arguably, and until this day. To unpack its wider influence over the long nineteenth century, we turn to two of the most significant, independent, and largely Ḥanafī jurisdictions in the world: the Ottoman Empire and Afghanistan.

By the time of the distinguished late Ottoman jurist of Damascus, Ibn ʿĀbidīn (1783–1836), the *Fatāwā Hindīyya* ranked only slightly after al-Marghinānī's *Hidāya* in terms of authoritative restatements of doctrine of the school. It is hardly surprising, then, that the *Fatāwā Hindīyya* served as a major reference for Ibn ʿĀbidīn's unsurpassed *Radd al-Muḥtār ʿala al-Durr al-Mukhtār*—possibly the preeminent treatise of the modern Ḥanafī school. Beyond scholarly treatises which drew from its provisions, the *Fatāwā Hindīyya*'s organizing principle of a comprehensive restatement of the most authoritative Ḥanafī positions laid the groundwork for subsequent state-promulgated codes of law, also based primarily if not exclusively on the Ḥanafī school. The most famous example of the *Fatāwā-yi ʿĀlamgīrī's* longstanding influence in this respect was its influential role in the drafting of the Ottoman Civil Code, or the *Mecelle*, of 1869–1876.[60]

In 1869, the dynamic Ottoman administrator, President of the Council of Judicial Ordinances, and later Minister of Justice Ahmed Cevdet Pasha (1822–1895) personally selected fifteen jurists to participate in the historic compilation of the *Mecelle*, or the Ottoman Civil Code.[61] The *Mecelle* was arguably the first and certainly the most famous attempt to codify the civil law of a Muslim-majority state, and was even viewed in some elite reformist circles as an attempt to salvage the shariʿa itself.[62] Creatively adapting the aesthetics and organization of European codes like the Code Napoleon in form, the codification committee

59. Nurfadzilah Yahaya, *Juridical Pan-Islam at the Height of Empire*, 41 Compar. Stud. South Asia, Africa, and Middle East 253, 256 (2021).

60. For an extensive treatment of the evolving Ḥanafī school and jurisprudential tradition in Ottoman legislation, *see* Samy A. Ayoub, Law, Empire, and the Sultan: Ottoman Imperial Authority and Late Ḥanafī Jurisprudence (2020); Burak *supra* note 11.

61. Ebül'ulâ Mardin, Medeni Hukuk Cephesinden Ahmet Cevdet Paşa (2011); Ahmet Şimşİrgil and Ekrem Buğra Ekinci, Ahmet Cevdet Paşa ve Mecelle (2008). *See also* Samy Ayoub, *The Mecelle, Sharia, and the Ottoman State: Fashioning and Refashioning of Islamic Law in the Nineteenth and Twentieth Centuries*, *in* Law and Legality in the Ottoman Empire and Republic of Turkey 129–155 (Kent F. Schull et al. eds., 2016).

62. Jackson, *supra* note 20, at xviii; Hallaq *supra* note 3, at 412.

was adamant in drawing from Islamic jurisprudential texts of the Ḥanafī school of law—of which the *Fatāwā Hindīyya* was near paramount—for its substantive provisions.[63] Notably, as seen from the varied dates of publication of each of the sixteen books (taking some eight years in all), the fact different books were produced years apart from each other on the one hand reflects the fraught and interrupted nature of the drafting committee's work, but also the arduous and meticulous processes of research and deliberation involved. This also underscores the conscious decision and insistence by Ahmet Cevdet Pasha steer clear of imitating or "transplanting" French, Swiss, German, or other European civil codes, a move that was circulating among reformist elites in the Ottoman Empire, Egypt, and Iran by the late nineteenth century.[64]

Less commonly observed than its impact on the *Mecelle*, however, is the *Fatāwā Hindīyya's* role in the production of modern codes of law by another Muslim sovereign and centralizing monarch, Amir Amān Allāh Khān (1892–1960) of Afghanistan. The legal and administrative codes of King Amān Allāh, most of which were compiled in Kabul between 1919 and 1926 and are sometimes referred to as the *Niẓāmnāmā Amānīyya*, contain multiple references to leading texts of the Ḥanafī school—including the *Fatāwā-yi ʿĀlamgīrī*—in some cases even within the numbered articles of select codes.[65] A prime example is

63. Hallaq, *supra* note 3, at 411.

64. Leon Poullada, Reform and Rebellion in Afghanistan: King Aman-Allah's Failure to Modernize a Tribal Society 93–94 (1973); Brinkley Messick, The Calligraphic State: Textual Domination and History in a Muslim Society 57–58, 63–66 (1993); Nathan Brown, The Rule of Law in the Arab World: Courts in Egypt and the Gulf 2–5 (1997); Hallaq, *supra* note 3, at 368. For original notes and early drafts of the *Mecelle* compilation committee's work in the Ottoman state archives, *see, e.g.*, Presidential State Archives of the Republic of Turkey, Ottoman Archives Division (T.C. Cumhurbaşkanlığı Devlet Arşivleri Başkanlığı, Osmanlı Arşivi, Istanbul, Turkey [hereinafter BOA]-İ.DUİT 91/28 (1287 M 18); BOA-İ.DH 649/45087 (1289 M 25); BOA-İ.DUİT 688/48024 (1291 C 19); BOA-İ.DUİT 692/48411 (1291 L 5); BOA-İ.DUİT 91/40 (1296 Ca 20). For a striking original copy of the Book on Admissions (Emanat), embellished with golden trim and a preface honoring the eponymous founder of the Ḥanafī school of jurisprudence, Imam Abū Ḥanīfa and his two most prominent students, Qāḍī Abū Yūsuf and Imam Muḥammad al-Shaybānī, *see* BOA-İ.DUİT 91/30 (1288 Z 24). For a more general discussion praising the new state code and bolstering its genealogy within the Ottoman-Islamic legal tradition, in particular the Qurʾan, Hadith, verdicts of the imams of the four Sunni schools of jurisprudence and scholarly consensus, *see* BOA-Y.EE 9/24 (1327 R 06). As Huricihan İslamoğlu has observed with regard to earlier Ottoman legislation in the nineteenth century such as the 1858 Land Code, the careful language here also reflects Ottoman state attempts to present the new law codes of the Tanzimat era and thereafter as *in continuity with*—rather than ruptures from—traditional Ottoman-Islamic legal practice. Huricihan İslamoğlu, *Property as a Contested Domain: A Reevaluation of the Ottoman Land Code of 1858, in* New Perspectives on Property and Land in the Middle East 34 (Roger Owen ed., 2000).

65. The work is commonly abbreviated as "ʿ*Ālamgīrīyya*" in the Afghan *Niẓāmnāmā* codes. *See* Afghanistan Digital Library [hereinafter ADL] no. 0317, Tamassuk al-Quẓāt al-Amānīyya 5–6, 87 (Kabul: Dār al-Sulṭānih, 1300/1921–22), http://afghanistandl.nyu.edu/books/adl0317/index.html (accessed Mar. 5, 2025). Historian Senzil Nawid (1999, 97) also notes that the *Fatāwā-yi ʿĀlamgīrī* was a key reference in the drafting of the *Niẓāmnāmā*

the *Tamassuk al-Quḍāt al-Amānīyya* (Handbook for Amān Allāh's Judges), published in Kabul in 1921–22. The legal manual cites canonical Ḥanafī texts of both early and late generations—from Fakhr al-Dīn Ḥasan bin Manṣūr bin Maḥmūd al-Uzjandī's (d. 1195) *Fatāwā Qāḍī Khān* and al-Marghinānī's (d. 1197) *Hidāya* to Ibn ʿĀbidīn's (d. 1836) *Radd al-Muḥtār*, but also the *Fatāwā-yi ʿĀlamgīrī*—all the while declaring the manual's reliance on "the refined Ḥanafī school" (*mazhab-i muhazab-i Ḥanafī*) as the source of jurisprudential authority.[66] Even had said legal manuals in Afghanistan not explicitly named the *Fatāwā-yi ʿĀlamgīrī*—which they do—the model of relying on the Ḥanafī school for new and more systematic kinds of legislation bears some of the aforementioned hallmarks of Shāh Awrangzīb's remarkable compendium some 150 years earlier.

In this sense what some scholars might call the "Ḥanafism" of a late Mughal emperor like Awrangzīb, late Ottoman administrators like Ahmet Cevdet Pasha,

---

Amānīyya. For earlier examples of legal manuals and primers for Afghan judges from the late nineteenth century drawing from canonical Ḥanafī legal treatises produced in the Ottoman and Mughal empires—including the *Fatāwā Hindīyya* —*see* ADL no. 0129, Aḥmad Jān Khān Alkūzāʾī, Asās al-Quẓāt (Kabul: Matbaʿ-i Dār al-Sulṭānih, 1303/1885), https://afghanistandl.nyu.edu/search/?q=0129&sort=title.sort&start=0 (accessed Mar. 5, 2025); ADL no. 0013, ʿAbd al-Rāziq Khān and Muḥammad Sarvar Khān, Sirāj al-Aḥkām fī Muʿāmalāt al-Islām (Kabul: Dār al-Sulṭānih, 1909–1917), https://afghanistandl.nyu.edu/search/?start=0&sort=title.sort&q=0013 (accessed Mar. 5, 2025).

66. *See* ADL no. 0317, *supra* note 65. Similar references to the Ḥanafī school can be found in other Amān Allāh Codes as well. For example, *see* ADL no. 0061, *Niẓāmnāmih-ʾi Marāsim-i Taʿziyihdārī* 7-8 (Kabul, Matbaʿ-i Dāʾirih-ʾi Taḥrīrāt-i Huẓūr wa Majlis-i ʿAlī-yi Wuzarā, 1303/1924), https://afghanistandl.nyu.edu/search/?q=0061&sort=title.sort&start=0 (accessed Mar. 5, 2025) ("The provisions of this code are issued in conformity with the rulings of the sacred shariʿa according to the refined Ḥanafī school following authori- tative chains of transmission." Original Persian: "*Muwād-i niẓāmnāmih-ʾi haza muwāfiq aḥkām-i sharʿ-i sharīf wa muṭābiq mazhab-i muhazab ḥanafī wa mabnī biriwāyāt-i quwīyya muftā bihā āst*."). Furthermore, there is also explicit textual evidence of Ḥanafīsm beyond the Amān Allāh Codes themselves. In the autumn of 1925—roughly the midpoint of his reign—Amān Allāh Khān delivered a series of important speeches in the southeastern city of Qandahar. Transcripts of those speeches include Amān Allāh referring to the Ḥanafī *madhhab* as the basis for his *Niẓāmnāmih* codes. For example, on November 5, 1925, Amān Allāh was not putting forward banal or generic claims of "shariʿa compliance," but specified the Ḥanafī source base in particular, declaring "The codes that have been compiled and organized in the period of my reign are in complete accordance with the Immaculate Quran and the Noblest Messenger following the honorable Ḥanafī school of jurisprudence. Original Persian: "*Dar dowrih-ʾi ḥukūmat-i man qawānīn kih wazʿ wa tartīb shudihānd tamāman hamān aḥkām-i qurʾān-i pāk wa rasūl-i akram budih mutābiq bimazhab- i sharīf ḥanafī āst*." In the ensuing line of his sermon, Amān Allāh defends his codification campaign as protecting the interests of the Afghan masses and government alike, stating, "The necessity of their compilation is evident for the general masses and most government officials who are not aware of the nuanced meanings of Quranic verses and the Hadith and the intricacies of the shariʿa. In this manner, they will be prevented from imposing their personal whims and desires on others." Aʿlī ḥaẓrat Amān Allāh Khān Ghāzī, Ḥakmīyat-ı Qānūn dar Afghanistan 183 (Habīb Allāh Rafiʿ, ed. 1378/1999) (translations by author). *See also* Faiz Ahmed, *Success, Failure, and Other Historical Crafts*, 41 Compar. Stud. South Asia, Africa, Middle East 266, 272–73 (2021).

and subsequent Afghan amirs like ʿAbd al-Raḥmān Khān, Ḥabīb Allāh Khān, and Amān Allāh Khān are very much in line with historian Elizabeth Lhost's insightful discussion of a prominent 1924 letter correspondence between the Afghan Minister of Education and Indian scholar of Delhi and chief mufti of the Jamʿīyat ʿUlamāʾ-i Hind, Muḥammad Kifāyat Allāh. In that notable printed exchange, we see examples of an Afghan ruler "promoting reforms in accordance with Ḥanafī jurisprudence and calling on experts from across the Islamic world to aid him," to cite Lhost's apt description, while simultaneously demonstrating "attempts to rethink the nature of decentralized Islamic authority, the role new nation-states might play in the interpretation and implementation of God's commands, and the relationship between Islamic jurisprudence and the 'modern' (*mutaʾakhirin*) reforms observed elsewhere in the world."[67]

While it would not be precise to characterize the *Fatāwā Hindīyya* as a modern law code—that is, the document did not become a singular reference for an area of law to the exclusion of other sources of law—the compendium's influence on the formation of Islamic law in late Mughal rule, and even later Ottoman rule, is nonetheless greatly understudied.[68] As embodied in Shāh ʿĀlamgīr's significant fatwa compendium, the idea of a comprehensive restatement of the most authoritative Ḥanafī positions laid the groundwork for subsequent Islamic codes of law in fellow Ḥanafī jurisdictions. Finally, the *Fatāwā Hindīyya* had another important corollary effect *outside* of India: it asserted the reputation of Indian ʿulamāʾ as crucial Ḥanafī authorities in the broader global Muslim community, in healthy competition with the predominantly Ḥanafī Ottoman imperial madrasas of Istanbul, Damascus, Baghdad, and the Hijaz, among many others.[69] The authors' opting for an Arabic original, rather than Persian, must also be considered in this regard. As Mouez Khalfaoui has suggested, "The decision to compose *al-Fatāwāl-ʿĀlamgīrīyya* in

67. Elizabeth Lhost, *Of Horizontal Exchanges and Inter-Islamic Inquiries*, 41 Compar. Stud. South Asia, Africa, Middle East 257 (2021). For an alternative view on the Hanafism of Afghan rulers at this time, *see* Michael O'Sullivan, *Islamic Modernism, the Hanafi Mazhab, and Codification in Aman Allah's Afghanistan*, 41 Compar. Stud. South Asia, Africa, Middle E. 261, 262–63 (2021).

68. Similarly, the legal scholar and author of an essential article on the *Fatāwā Hindīyya* Muhammad Zubair Abbasi is of the opinion that the text "performed the functions of a legal code in the historical context in which it was compiled though it was not the exclusive source of legal norms in the administrative structure of the Mughal Empire." Abbasi, *supra* note 11, at 452. Hence due to its non-exclusive status as a source of state law, many jurists today would probably say the *Fatāwā Hindīyya* falls short of constituting a modern law code. Masud, *supra* note 11. For varying perspectives on what constitutes a "code" in modern Islamicate contexts, *see* O'Sullivan, *supra* note 67 at 263–64 and Ahmed, *supra* note 68 at 272–73. For other early examples of codification/proto-codification within Ḥanafī contexts, *see* Rudolph Peters, *'For His Correction and as a Deterrent Example for Others': Mehmed Ali's First Criminal Legislation (1829–1830)*, 6 Islamic L. and Soc. 164 (1999); Rubin, *supra* note 3; Ahmed, *supra* note 58.

69. On the wide range of debates within the late Ḥanafī school, especially within modern South Asia, *see* O'Sullivan, *supra* note 67, at 261–66. *See also* Brannon D. Ingram, Revival from Below: The Deoband Movement and Global Islam (2018).

Arabic was a defensive measure taken by the Mughals... Arabic was a prestigious language, and the initial composition of the text in Arabic helped the ʿulamāʾ preserve their authority as exclusive interpreters of Islamic law."[70]

On this latter note, the *Fatāwā Hindīyya* had an auxiliary effect, if not objective, beyond legal precedent. It bolstered the reputation of Indian ʿulamāʾ as authorities of the Ḥanafī school, competing as they did with respected counterparts in Anatolia, Syria, Iraq, Egypt, the Hijaz, and Transoxiana, among other nodes of the early modern Islamicate and Persianate worlds. Testifying to its longstanding influence, in more recent times the *Fatāwā-yi ʿĀlamgīrī* endures as an important reference and virtual staple in the libraries of modern juridical actors as diverse as Afghan, Syrian, and South African ʿulamāʾ; Pakistani, Indian, and Bangladeshi lawyers and judges; or British, Canadian, and US law professors specializing in Islamic jurisprudence and Muslim diasporic communities until this day.[71]

Conclusion

It is a virtual axiom of legal history, and sociolegal history more specifically, that more important than the actual document or provisions of a legal text are the creators of that text, as well as how that text proceeds in history to be interpreted and debated; authorized and implemented; and remembered or forgotten. One of the most remarkable features of the *Fatāwā-yi ʿĀlamgīrī*, as far as we know, must have been the remarkably proficient and versatile committee of experts that produced it. Put together, Shāh Awrangzīb's agile legal board combined not only the theoretical expertise of Islamic scholars versed in multiple areas of Ḥanafī *fiqh*, but also those with substantial experience in the legal and administrative bureaucracy of the empire. This synthesis of expertise manifested in the text's systematic arrangement of topics, chapters, and sub-chapters, designed to provide a comprehensive reference for the school's interpretations of Islamic law across a range of subjects, intended for more lay judges and personnel of the state's expanding judicial network. At the same time, in its fealty to the Ḥanafī jurisprudential canon, the compendium displayed an effort to retain epistemic and juristic authority in and outside the Mughal realm through the power of precedent, at least among the sizeable if not majoritarian Ḥanafī communities among Muslims of India, Afghanistan and Central Asia, and the Ottoman domains.

---

70. Khalfaoui, *supra* note 10, 121–22. Subsequent evidence this goal was achieved can be seen in the lauded first print edition of the *Fatāwā Hindīyya* in Arabic in Egypt by the Azhari scholar Ibrahim al-Bajuri (d. 1860), which as Wright notes, earned him favor of the Khedival government and was later appointed as a judge to Alexandria in 1860. Wright, *supra* note 11, at 61.

71. On the enduring influence of the *Fatāwā-yi ʿĀlamgīrī* in South Asian law schools, courtrooms, and everyday Muslim life from colonial rule to contemporary times, *see* Elizabeth Lhost, Everday Islamic Law and the Making of Modern South Asia 68 (2022); Ingram *supra* note 69, at 45. On the transformations of Islamic jurisprudence and South Asian Muslim legal history especially under British rule, *see* Julia Stephens, Governing Islam: Law, Empire, and Secularism in South Asia (2018); Cohn *supra* note 56.

While maintaining continuity with the precedents of earlier fatwa collections, the *Fatāwā Hindīyya* was also novel and innovative in several key respects. There were new chapters on procedural matters—reflecting the needs of an expanding early modern state—providing more detailed and systematic organization on matters like judicial proceedings and decrees, legal forms and devices, as well as more streamlined guidelines for conventional topics like marriage, divorce, and the rules of inheritance. For some scholars, these new dimensions push the compendium from its late medieval and early modern roots closer to modern definitions of a law "code." For reasons both semantic and substantive, it has proven difficult for historians of Islamic law to authoritatively resolve the question of what constitutes a "code" of Islamic law, or even a (legitimate) process of codification. What should be clear, however, is that the authors of the *Fatāwā Hindīyya*—bolstered by their royal patron, Shāh Awrangzīb ʿĀlamgīr—built on precedent as they put forth novel interpretations of Islamic law, ethics, devotional practices, and statecraft within a professed loyalty to the Ḥanafī school of jurisprudence.

We began our discussion by observing that Islamic legal historians commonly recognize the Ottomans with having constructed the most centralized and durable legal bureaucracy of the three Turko-Mongolian Muslim "gunpowder" empires of the early modern age. There is still no compelling evidence to negate this assessment. Such comparisons, however, are too often attributed with the benefit of hindsight—that is to say, following the Ottoman state's remarkable endurance into the twentieth century, which itself followed punishing inter-imperial competition with European powers in the nineteenth century, and the domestic entrenchment of centrifugal forces in the eighteenth. These tumultuous processes, after all, were catastrophic for the Safavid court in Isfahan and their Mughal counterparts in Delhi.

There is also the danger of historians making overbroad comparisons between the great early modern Muslim empires, including the methodological problems of projecting backwards on the Safavid, Mughal, Uzbek, and Afghan empires contemporary notions of state "weakness", "sickness," or "decline" simply based on the longevity of the Ottoman dynasty in hindsight. This is doubly ironic given that Ottoman historiography has long debunked and rightly dismissed varying decline theses of its own.[72] Yet there is a broader intersectional point to be made here. The focus on early modern Turko-Mongolian Muslim states as stand-alone entities—rather than overlapping or even intertwining imperial courts, societies, and borderlands—has overshadowed the circulation of texts and ideas traversing between them, and the legacies of Islamic legal exchange between the Ottoman and Mughal empires in particular.

72. *See* Cemal Kafadar, *The Question of Ottoman Decline*, 1-2 Harvard Middle E. and Islamic Rev. 30 (1997-98); Donald Quataert, *Ottoman History Writing and Changing Attitudes Towards the Notion of 'Decline'*, 1 History Compass (2003).