



2019

Prefatory Notes on Persian Idioms of Islamic Jurisprudence: Reasoning and Procedures of Law-Making in Premodern Islamicate India

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Kanalu, Naveen (2019) "Prefatory Notes on Persian Idioms of Islamic Jurisprudence: Reasoning and Procedures of Law-Making in Premodern Islamicate India," *Manuscript Studies*: Vol. 4 : Iss. 1 , Article 5. Available at: https://repository.upenn.edu/mss_sims/vol4/iss1/5

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Abstract

The essay elaborates on the manuscript tradition of transmission, commentary, and glossing of *fiqh* or “Islamic jurisprudence” texts in medieval and early-modern juridical culture from the Indian sub-continent. Premodern Muslim jurists composed doctrinal treatises primarily in Arabic, the shared theological language of the ‘ulamā’ or “learned scholars”. However, in the Indian context, Persian too had acquired the status of a language of Islamic law. From the fourteenth century, *fatāwā* compilations were made in Persian. By seventeenth-century Mughal rule in northern India, *sharḥ* or “commentary” and *ḥāshiya* or “super-commentary” in Persian were deployed as a mechanism for pedagogical transmission. Analyzing two extant Persian manuscripts pertaining to the Ḥanafī madhhab or “school” of juridical thought, *Fatāwā-i firūzshāhī* (fourteenth century) and ‘Abd al-Ḥaqq Sajādī’s *Sharḥ-i hidāya* (seventeenth century), the essay appraises the nature of textual and manuscript practices involved in generating Islamic juridical norms and practices. Examining philological and textual features exhibited internal to these two texts, I argue that *fiqh* doctrinal writing in the age of post-classical Islamic sciences (twelfth to eighteenth Centuries) had become “hybrid” in style. Rather than indicating tendencies towards a phase of “decline” due to “orthodox” adherence to tradition, such texts of legal genre portray a complex culture of Islamic law-making in the premodern period.

Keywords

Fiqh, Islamic jurisprudence, *fatāwā*, Ḥanafī school, *sharḥ*, commentarial tradition, manuscript studies, India

MANUSCRIPT STUDIES

A Journal of the Schoenberg Institute for Manuscript Studies

VOLUME 4, NUMBER 1

(Spring 2019)

Manuscript Studies (ISSN 2381-5329) is published semiannually
by the University of Pennsylvania Press



The Schoenberg Institute
for Manuscript Studies

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MANUSCRIPT STUDIES

VOLUME 4, NUMBER 1

(Spring 2019)

ISSN 2381-5329

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Published by the University of Pennsylvania Press,
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Printed in the U.S.A. on acid-free paper.

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One-year subscriptions are valid January 1 through December 31. Subscriptions received after October 31 in any year become effective the following January 1. Subscribers joining midyear receive immediately copies of all issues of *Manuscript Studies* already in print for that year.

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A Journal of the Schoenberg Institute for Manuscript Studies

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Prefatory Notes on Persian Idioms of Islamic Jurisprudence: Reasoning and Procedures of Law-Making in Premodern Islamicate India

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THE INDIAN SUBCONTINENT WAS one of the prominent regions in Eastern Islamicate lands for the production and circulation of Islamic manuscripts in the premodern period. While Persian was predominantly employed as the language of administration and court culture, Arabic was, however, the primary language of theologico-religious discourses in different branches of Islamic thought such as *tafsīr* (Qur'anic exegesis), *kalām* (theology), and *fiqh* (jurisprudence). Compared with premodern Persian works, Arabic treatises produced in the Indian subcontinent have often been neglected in contemporary scholarship, despite the region housing one of the largest collections of Arabic manuscripts in the world. This is largely due to the fact that modern Western academic debates has privileged the study of Islamic thought from the Middle Eastern countries where Arabic is the spoken language as well as the language of the literati. Moreover, South Asian scholars have barely studied the corpus of Arabic texts made in the subcontinent.¹ Hence, we know little about the transmission,

1 For a general survey, see Tahera Qutbuddin, "Arabic in India: A Survey and Classification of Its Uses, Compared with Persian," *Journal of the American Oriental Society* 127, no. 3 (2007): 315–38.

transcription, and circulation of Arabic manuscripts in the Indian subcontinent, and even less concerning various ways in which Persian acted as an intermediary language for the pedagogical and doctrinal diffusion of Islamic knowledge systems available in Arabic to the wider locales of Persian-speaking elite subjects. In the present article, I analyze the trajectories of *fiqh* (Islamic jurisprudence) texts, doctrines, and ideas among ‘*ulamā*’ (sing. ‘*ālim*) or “learned scholars” of the Ḥanafī *madhhab* (school) of Sunni jurisprudence in Hindūstān (the northern territories of India). Critically engaging with two works in Persian, I demonstrate some salient linguistic registers and styles that help us portray continuities and differences of Persian texts of law from well-established conventions in Arabic. Through this study, I make a case for the reassessment of Persian as not only the language of political power but equally the language of law.²

Premodern Muslim jurists divided *fiqh* into two distinct domains: *uṣūl al-fiqh* (the principles of jurisprudence) that furnished legal-theoretic reflection and *furū’ al-fiqh* (the branches of jurisprudence) that were properly concerned with the elaboration of legal precepts that were applicable to various aspects of individual, social, and political life of Muslims. While the former domain broadly pertains to modern conceptions of legal philosophy involving logical methods necessary for legal reasoning, the latter relates to the practical application of legal reasoning to derive legal precepts. Through the early centuries of Islamic jurisprudence, these precepts were elaborated to constitute a large corpus that formed the basis for substantive law. Both these domains belong to human interpretation of *sharī‘a* or “God’s law.” Muslim jurists reasoned that God’s law in its essence was unknowable. However, the deployment of ‘*aql* (reason) was considered essential to elaborate legal precepts, which could asymptotically tend, even

2 For the cosmopolitan nature of Persian and its political significance, see Muzaffar Alam, *The Languages of Political Islam in India, Circa 1200–1800* (Delhi: Permanent Black, 2004). Critical assessments of the philological and institutional vitality of Persian as a court language can be found in Muhammad Abdul Ghani, *A History of Persian Language and Literature at the Mughal Court, with a Brief Survey of the Growth of Urdu Language*, Parts I–II (Allahabad: The Indian Press, 1929); Momin Mohiuddin, *Chancellery and Persian Epistolography Under the Mughals: From Bābur to Shāh Jahān (1526–1658): A Study on Inshā’, Dār al-Inshā’ and Munshāts, Based on Original Documents* (Calcutta: Iran Society, 1971).

if in a fallible manner, toward the hidden truth of God's law. This was because reason itself was a human attribute bestowed by God; the right application of his law for the right conduct of a Muslim necessarily required human interpretation.

Plural forms of textual practices prevailed in the elaboration of Ḥanafī jurisprudence in the Indian subcontinent. Formulating legal precepts and constructing syllogistic arguments for their derivation required a juridico-technical language that Arabic possessed through the jurisprudential and theological tradition. Persian, as employed in the Indian context, never assumed such a position. The hybrid forms we find in Persian works of Islamic law attest to a pragmatic “core” for the composition of such texts. They were rarely centered on legal philosophical problems or the epistemic reasons underlying rule-making, that is, *uṣūl al-fiqh*. Rather, Persian works offered doctrinally appropriate rules for right conduct for Muslim individuals in their quotidian pietistic rites.

In the first section, I develop a brief overview of the range of Islamic jurisprudential works that were prevalent in the premodern period when northern Indian territories were under the rule of various Delhi Sultanates (ca. 1200–1526) and the Mughal Empire at the height of its suzerainty (1526 to early 1700s). In the second section, I elaborate on various forms of juridical methods that acted as a primary vehicle for textual transmission. These include *sharḥ* (commentary) and *ḥāshiyā* (gloss) that were meant as pedagogical guides. They also constituted the means by which juridical opinion was used to express a common belonging to the respective *madbhab* (school), in this case, the Ḥanafī one. In the final section, I illustrate elements of content and pattern in two Persian texts, *Fatāwā-i firūzshāhī* and *Sharḥ-i hidāya*, to understand the possible ways in which Persian was deployed by jurists for a genre of writing dominated by Arabic.

Explicating significant patterns found in these texts, the article reassesses the nature of transmission of juridical doctrine from Arabic to Persian in the premodern context. I illustrate authorial attitudes toward the justification of rules, norms of commenting on previous texts, and more prominently, limits and possibilities of creating thought in a language that lacked the technicality to be a language of law in its immediacy since Arabic had been the standard vehicle for legal production. The composition of theological and

doctrinal works in Persian had been a common feature in Iran and Central Asia as much as Persian was used for works on personal piety and ritual in the premodern period. The theologian Ghazali's (ca. 1058–1111) *Kīmīya-i sa'ādat* is, perhaps, the most notable example. Yet, we know little about Persian legal writing in the Indian subcontinent.

As opposed to a large body of modern scholarship on the formative centuries of the classical period (eighth to twelfth centuries), the post-classical period remains understudied. This is largely due to the dominance of questions concerning the “origins” of Islamic thought in general and Islamic law in particular since orientalists began to study them in the nineteenth century. Furthermore, as far as Islamic jurisprudence is concerned, there was a consensus held in the nineteenth- and twentieth-century idea that the gate of *ijtihād* (interpretative reasoning) had been closed by the end of the Abbasid Caliphate.³ Derivatively, much of our contemporary understanding of the post-classical period is postulated on the idea that later treatises and commentaries were merely repetitive in nature and rigidly adhered to established dogma. This idea has entertained the opinion that no significant innovations or variations occurred in Islamic jurisprudence from the thirteenth century onwards. Muslim jurists were supposed to have accepted constituted knowledge systems within their jurisprudence.

This position, which was advanced by nineteenth-century orientalists, has been increasingly questioned through the study of commentarial practices as well as scholarly networks that existed in the premodern period.⁴ However, in exploring the nature of *fiqh* discourses in the Indian

3 Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1964), 69–75. Also see Noel J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 182–201.

4 See Khaled El-Rouayheb, *Islamic Intellectual History in the Seventeenth Century: Scholarly Currents in the Ottoman Empire and the Maghreb* (Cambridge: Cambridge University Press, 2015), 1–10, for an appraisal of this question in the Middle Eastern context. For a general survey of Islamic theological networks in sixteenth- and seventeenth-century Indian subcontinent, see Asad Q. Ahmed and Reza Pourjavady, “Theology in the Indian Subcontinent,” in *The Oxford Handbook of Islamic Theology*, ed. Sabine Schmidtke (Oxford: Oxford University Press, 2016), 606–12.

subcontinent, we are further constrained by the fact that the production and circulation of Islamic thought largely overlaps with the post-classical period as Islamic intellectual culture in the region emerged much later than in the Middle East. This leads to a difficult presupposition that Islamic knowledge systems in the subcontinent merely imitated established practices from elsewhere. However, there are several difficulties in making such judgments. Even a partial illustration of this intellectual history requires the knowledge of manuscript circulation and commentarial practices involving annotations, marginalia, and glossaries. First, we have little knowledge of the manuscripts themselves and the proliferation of various genres of legal disputations. Second, due to the neglect in the study of manuscript circulation among various intellectual networks, little philological and text-critical study, let alone an elaborate reconstruction of Islamic intellectual history, has appeared so far in the Indian context.⁵ As a corollary, the contents, doctrines, and positions within classical jurisprudential texts are very often considered the *locus classicus* without accounting for successive iterations of the intellectual culture in the premodern period. A clarification of these difficulties requires us to rethink *fiqh* production in the subcontinent as a continuum with Transoxanian juridical thought that widely proliferated in the region since at least the thirteenth century.

What were the interpretative mechanisms that premodern Ḥanafī jurists used to develop positive legal norms, and what were the variations in their jurisprudential style? I examine this concern through a reading of manuscripts of two types of juridical texts belonging to *furū' al-fiqh*: *fatāwā* (sing. *fatwā*; collations of legal precepts) and *sharḥ* (commentary), both composed in Persian. The former is Sadr al-Dīn Ya'qūb Muzaffar Kirmānī's *Fatāwā-i firūzshāhī* (known sometimes as *Fiqh-i firūzshāhī*) from the fourteenth century, and the latter is 'Abd al-Ḥaqq Sajādīl Sirhindī's *Sharḥ-i hidāya* from the late seventeenth-century Mughal Empire. Critically analyzing the internal construction of these two works that remain in manuscript form to

5 A handful of *fatāwā* and *sharḥ* texts were edited and lithographed in the nineteenth century and rendered into modern Urdu. However, none of these texts have been translated into English.

date, I argue not only for the persistence and development of Islamic juridical thought in the post-classical Islamic period (twelfth to eighteenth centuries) but equally its diffusion in Persian.

Forms of Constructing Juridical Discourse: Genres and Texts

The production of *furūʿ al-fiqh* texts in the Indian subcontinent spans from as early as the thirteenth century to the nineteenth century under late colonial British rule. The dominant genre of legal writings is known as *fatāwā*.⁶ Though the original meaning of the term *fatwā* in Arabic designates a *responsa* issued by a *muftī* (jurisconsult), in premodern jurisprudence, *fatāwā* had become a genre of legal writing.⁷ These texts were collations of legal precepts and positions of jurists that were arranged in *kitābs* (books) dealing with various aspects of personal conduct such as purification, ablution, performance of prayer, as well as conduct that was intersubjective in nature, namely, marriage, divorce, commerce, sale, and so on. *Fatawā* collections, as they developed in the Indian subcontinent, were not merely a set of *responsa* issued against a legal opinion sought by an individual from a *muftī*. Instead they collated the different states and stages of right conduct that a Muslim individual had to abide by. Given the structural nature of Islamic law, which was not a law framed by political authorities such as the Sultan, it emerged as a jurists' law brought about by consensus, disagreement, and interpretation within an established tradition such as the Ḥanafī school.⁸ *Fatawā* were, therefore, collations that did not rationalize conflicts of interpretation on a particular matter but involved only the enunciation of different juridical positions to provide a comprehensive

6 Zafarul Islam, "Origin and Development of *Fatāwā* Compilation in Medieval India," *Studies in History* 12, no. 2 (1996): 223–26.

7 In premodern Islamic jurisprudential culture, the following distinctions of juridical offices and positions are relevant: *fuqahāʾ* (sing. *faqīh*; jurists), *muftūn* (sing. *muftī*; jurisconsults), and *quḍāt* (sing. *qāḍī*; magistrates). Scholars often combined two or more of these functions. They were generically called '*ulamāʾ*' (sing. '*ālim*'; learned scholars).

8 Wael B. Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 57–85.

understanding of how previous jurists of the *madhhab* or “school” (designated *aṣḥābunā*) reflected regrouping of the positions on any legal proposition or opinion. *Al-fatāwā al-‘ālamkīriyya* (Institutions of the World Conqueror), compiled in the 1660s at the Mughal imperial court by the order of emperor Aurangzeb ‘Ālamgīr (r. 1658–1707), not so much lays out legal definitions and explanations as appraises the positions of previous jurists. For instance, on matters pertaining to how *kharāj* (land tax) had to be imposed, the rate of taxation based on the quality and other conditions of land, the appropriate period of collection, and whether tax could be collected in cash or in kind, the authors expose us to the doctrines of works such as Abū Yūsuf’s (d. 767) *Kitāb al-kharāj*, previous *fatāwā* collections such as *Fatāwā-i qāḍikhān*.⁹

The proliferation of these compilations and collations over several centuries constituted a corpus by themselves of legal writing that not only provided referential compendia to locate divergent legal positions of Ḥanafī jurists but also allowed later jurists to read them to synthesize the differences and form their own legal opinion. Premodern Muslim jurists gained reputation not only through their deep knowledge of the legal corpus but, more importantly, their ability to interpret them, distinguish between general and particular propositions, and syllogistically derive their own legal position based on reasoning. With the notable exception of *Al-fatāwā al-‘ālamkīriyya* that was compiled by several jurists under the guidance of Shaikh Nizām, most *fatāwā* were made by individual Ḥanafī jurists for their rulers. To mention a few, these include ‘Ālim ibn ‘Alā Ḥanafī’s (d. 1397) *Al-fatāwā al-tātārkhānīyya*, Shihāb al-Dīn Ahmad Nizām al-Jīlānī’s *Al-fatāwā al-ibrāhīmshāhīyya* (sixteenth century), Muḥammad Amīn Mu’minābādī’s *Fatāwā-i amīnīya* (mid-sixteenth century), and Naṣīr al-Dīn Lāhaurī’s *Fatāwā-i barabna* (early seventeenth century).

From a genealogical perspective, Islamic legal texts in India owe their origins to debates among Transoxanian jurists from the twelfth century

9 Shaikh Nizām et al., *Al-fatāwā al-‘ālamkīriyya al-ma’rūfa baina al-nās bi al-fatāwā al-hindīyya fī madhhab al-imām abī ḥanīfa al-nu’mān ta’līf jamā’a min ‘ulamā’ al-hind wa kāna ra’iṣubum fī ta’līfihā maulānā al-shaikh nizām wa dhālika bi ‘amr al-sulṭān abī al-muzaffar muhyī al-dīn muḥammad aurangzīb bahādūr ‘ālamkīr*, vol. 2 (Cairo: s.n., 1865), 219–21.

onward, and most notably, Fakhr al-Dīn Ḥasan ibn Maṣṣūr al-Farḡhānī's compilation, *Fatāwā-i qāḍikhān*. Beyond *fatāwā* compendia, Transoxanian doctrinal writings and pedagogical guides constituted the corpus for teaching and transmission of the knowledge of *fiqh* in madrasas. Burhān al-Dīn 'Alī ibn Bakr al-Marghīnānī's (d. 1197) *Al-bidāya sharḥ bidāyat al-mubtadī fī al-fiqh* (the "Guidance") was foremost among the Transoxanian works that circulated in the Indian subcontinent.¹⁰ Other prominent works whose manuscripts can be still found in collections across the subcontinent are Imām Burhān al-Sharī'a Mahmūd ibn al-Sharī'a 'Ubaid Allah's *Al-wiqāya al-riwāya fī masā'il al-bidāya* (an Arabic commentary on *Al-bidāya*), and Najm al-Dīn Abū Ḥafṣ 'Umar ibn Muḥammad al-Nasafī's (d. 1142) *Kanz al-daqa'iq*. Muḥammad ibn 'Abd al-Rashīd al-Sajāwandī's (fl. eleventh century) treatise on inheritance laws, *Farā'id al-sajāwandī* (commonly known as *Al-sirājīyya*), also circulated widely in the teaching of inheritance and property rights among Ḥanafī jurists.

A thorough understanding of many of these juridical works and the manner in which they were employed in the transmission of Ḥanafī legal doctrine is lacking. Even during the early British colonial rule, a handful of texts were translated and commented, mainly those that colonial administrators and orientalist thought could have legal applicability and enforceability in forms such as digests, codes of law, and so on.¹¹ The British orientalist William Jones (1746–1794) translated *Al-sirājīyya*, whereas Charles Hamilton (1753–1792) translated a Persian rendering of *Al-bidāya* into English.¹² Both of these Transoxanian works were, however, not texts

10 *Al-bidāya* was the most extensively read and commented Ḥanafī legal text in Central Asia, the Indian subcontinent, and the territories of the Ottoman Empire in premodern times. Several hundreds, if not thousands, of manuscripts exist in collections around the world.

11 I have argued elsewhere on the philological and legal-philosophical foundations of early British engagement with premodern Islamic legal texts in the region. See Naveen Kanalu, "The Pure Reason of *Lex Scripta*: Jurisprudential Philology and the Domain of Instituted Laws During Early British Colonial Rule in India (1770s–1820s)," in *Empires and Legal Thought: Ideas and Institutions from the Ancient World to the Modern World*, ed. Edward Cavanagh (Oxford: Oxford University Press, forthcoming).

12 William Jones, "Al Sirājīyyah; or, The Mohammedan Law of Inheritance," in *Works of William Jones in Six Volumes*, vol. 3 (London: G. G. and J. Robinson, 1799), 507–92. See

of legal compilation such as the *fatāwā*, which resemble broadly what we consider substantive law. Instead, they combined functions of transmitting juridical knowledge in three forms, pedagogy, commentary, and doctrine, that I will examine in the next two sections.

Post-Classical Islamic Jurisprudence: Reasoning and Making Law

A predominant feature of post-classical Islamic juridical thought is the extensive development of *sharḥ* (commentary) and *ḥāshiyā* (super-commentary) as a method of reading and interpreting “classical” texts. Even though their original function was the conservation of a textual tradition, the proliferation of a vast set of commentaries on previous commentaries produced a distinct corpus whose primary purpose was juridical reasoning on how appropriate rules could be framed.

Al-Marghīnānī’s *Al-bidāya* itself is a *sharḥ* that the Transoxanian jurist composed on his earlier works. Ya’akov Meron has argued that the work from the twelfth century played a critical role in the shift toward a distinct understanding of legal practice through changed reasoning supplied by Al-Marghīnānī that has been practiced ever since.¹³ For instance, most jurisprudential works composed in the period after him closely align their textual organization in keeping with the classification that Al-Marghīnānī made among the *kitābs* (books). More significantly, the work seems to have primarily supplied, given its very name, the “Guidance,” a form of pedagogical text for teaching and transmission of legal precepts rather than constitute

Charles Hamilton, *The Hedaya, or Guide: A Commentary on the Mussulman Laws*, vol. 1 (London: T. Bensley, 1791).

13 See Ya’akov Meron, “Marghīnānī, His Method and His Legacy,” *Islamic Law and Society* 9, no. 3 (2002): 410–16, for an assessment of innovations made by Al-Marghīnānī in reorganizing the arrangement and order of *kitābs* (books) based on pragmatic considerations. Despite his detailed study of *Al-bidāya*, Meron’s extreme position that “Post Classical verbiage is strictly of no value from a juridical point of view” is unhelpful. Ya’akov Meron, “The Development of Legal Thought in Hanafi Texts,” *Studia Islamica* 30 (1969): 92–98.

positive law.¹⁴ Instead, it provided the substratum for *fatāwā* collections. In Wael Hallaq's thesis, since later *fatwas* issued by jurisconsults had validity over previous ones, their compilation brought about the elaboration of new legal precepts.¹⁵ Even if the processual nature of accumulated legal precepts formed a corpus of substantive law, this does not resolve the epistemological question of how and when *fatāwā* became a historically recognized juridical genre among jurists through their gradual detachment from the jurisconsults' "responsa."

In the Indian context, *Al-bidāya* and other Transoxanian "commentaries" in Arabic circulated at least from the thirteenth century. Persian had already been used for compiling *fatāwā* by the fourteenth century. Extant manuscript sources do not allow us to date Persian-language commentaries though to a period prior to the early seventeenth or, at best, the late sixteenth century. It is only from the mid-seventeenth century that a range of Transoxanian commentaries like *Al-bidāya*, *Al-wiqāya*, and *Al-Sirājīyya* were commented in Persian. They explained the meaning of juridical terms as well as propositions contained in *uṣūl* (sources) of law. Manuscripts of these works abound in marginalia and, more importantly, glosses, which are a key to discern methods of reading techniques among jurists. While marginalia are especially useful to know the specific opinions that might have been held, rejected, or revised in the reading, glosses offer a continuous writing across and along the text itself and hence double the act of writing, thereby, becoming "super-commentaries" in their own right.

Manuscripts of *fiqh* from the Indian subcontinent can be found in divergent legal genres. Their significance, however, lies in the abundance of *fatāwā*, which were compiled at the instance of the rulers to offer coherent legal rules for political and administrative mechanisms in the sultanates. We may understand these *fatāwā* works as equivalent to a corpus of substantive

14 The modern status of *Al-bidāya* as a book of legal principles to derive positive law is largely based on colonial scholarship on Ḥanafī juridical texts. Hamilton, in particular, attributed it a "canonical authority" for making laws while it was an authoritative commentary for premodern Ḥanafī jurists. Hamilton, *The Hedaya, or Guide*, xlv.

15 Wael Hallaq, "From *Fatwās* to *Furū'*: Growth and Change in Islamic Substantive Law," *Islamic Law and Society* 1, no. 1 (1994): 48–51.

law, for which reason they were never commented upon. *Sharḥs* or *ḥāshiyas*, on the one hand, and, on the other, *fatāwā* were the major forms for the transmission of juridical knowledge and presupposed each other's existence in explaining right conduct.

Commentaries by themselves were never considered sufficient for juridical reasoning. For premodern Ḥanafī jurists, the nomothetic principles they followed had two layers. On the one hand, these principles were governed by logical methods of deriving laws particular to the Muslim community. On the other hand, since juridical reasoning formed only a part within the application of reason, reason also transcended the particularity of *fiqh*. This aspect is revealed implicitly in commentaries to the extent that they engage in reasoning. However, *fatāwā* collections explicitly postulate the necessity of this hypothesis to sustain the science of jurisprudence. The compilers of *Al-fatāwā al-‘ālamkīriyya* specify in their prefatory introduction that the collation of legal precepts not only does not invalidate reasoning, but requires its active synthesis in formulating right norms for right conduct. Since mere rule following did not suffice to understand appropriate action, *Al-fatāwā al-‘ālamkīriyya* internally explains the need to examine legal precepts through the deployment of “evidence” and of “demonstration” (*al-dalīl wa al-burhān*).¹⁶ They are to be found in *‘aql* (human reason) that is outside the content inherent in legal precepts. Such reasoning is deeply encrusted within the textual structure and propositional content of the work as it presents positions of distinct legal texts from the past without necessarily demonstrating the definitive norm that could be put into practice. The method of collation in the *fatāwā*, therefore, presupposes the need for *sharḥ* as a mode of juridical scholarship to resolve internal contradictions in the difference of opinion among jurists involving semantic, logical, and propositional content. *Sharḥs* were the jurists' guidebooks in which the reader educated in jurisprudential thought could apply logical and juridical reasoning.

For premodern Ḥanafī jurists in the Indian subcontinent as much as in Transoxiana, *fatāwā* collections supplied the rules, whose interpretation

16 Nizām et al., *Al-fatāwā al-‘ālamkīriyya al-ma‘rūfa baina al-nās bi al-fatāwā al-hindīyya*, 1:3.

required recourse to works such as Al-Marghīnānī's *Al-bidāya* and commentaries on it. The set of early Ḥanafī juridical writings attributed to Abū Ḥanīfa, Abū Yūsuf, and Shaybānī known collectively as *zābir al-riwāya* constituted valid doctrine. However, as Brannon Wheeler has pointed out, the citation of authoritative works did not impede *ikhtilāf* (juristic disagreement) on the opinions of previous jurists.¹⁷ On the contrary, multiple layers of successive commentaries allowed jurists, despite their explicit allegiance to authoritative works, to revise their formulations in style and content based on the purpose to which a text was put. Manuscript copies often reveal this hybrid nature of commentarial practices wherein the neat distinction between “paraphrasing commentary and running commentary” proposed by L. W. C. (Eric) Van Lit for Arabic-language commentarial works cannot be easily made within Persian legal works.¹⁸ The former, he contends, explains a set of arguments paragraph-wise, whereas the latter pertains to clarification at the sentence level of the text. Especially, *sharḥs* composed in Persian do not reveal such distinction since they do not strictly adhere to Arabic conventional modes of juridical explanation.

Variations in idiom, style, and composition invariably creep into pre-modern juridical thought, which cannot be explained through inflections in “authorial intention.” Two reasons can be adduced for this process. First, jurists are concerned with elaborating the meaning of rules, which fit into a system of reasoning that is beyond the control of any particular individual. Instead, they are attributable to the logical procedures necessary to justify any rule. Second, the language of law, despite differences we may find between juridical systems (be they Islamic, Hindu, Roman, etc.), is universally abstract in nature. Law portrays an impersonal and an atemporal voice wherein jurists hardly interrupt legal formulation through recourse to narrative style. Even when they provide examples of legal disputes, they do so

17 Brannon M. Wheeler, “Identity in the Margins: Unpublished Ḥanafī Commentaries on the *Mukhtaṣar* of Aḥmad b. Muḥammad al-Qudūrī,” *Islamic Law and Society* 10, no. 2 (2003): 188.

18 L. W. C. (Eric) Van Lit, “Commentary and Commentary Tradition: The Basic Terms of Understanding Islamic Intellectual History,” *MIDÉO: Mélanges de l'Institut dominicain d'études orientales* 32 (2017): 3–26.

only to the extent required from the perspective of legal resolution. The study of textual transmission of premodern juridical texts is challenging since law speaks to us in an un-authorial and abstract manner where the internal cohesion of a legal norm is the primary criteria for its validity rather than what the author believes has to be the case. This un-authorial nature of law is mirrored in the universal validity that law claims for itself as being authoritative insofar as law stipulates rules, conditions, and conduct within a theologico-political environment. The authority of law and its un-authorial form are co-constituted.

Formulating Ḥanafī Juristic Ideas: Persian Idioms of Law

Fatāwā compilations were occasionally composed in Persian in the Indian subcontinent since at least the fourteenth century. One of the earliest works we can date in Persian, Sadr al-Dīn Ya‘qūb Muzaffār Kirmānī’s *Fatāwā-i firūzshāhī*, dedicated to the Tughlaq Sultan, Abū al-Muzaffār Sultān Fīrūz Shāh (r. 1351–88) provides a rare glimpse into the establishment of a genre of juridical writing from a generic legal instrument, *fatwā*, or a *responsa*. *Fatāwā-i firūzshāhī* follows the pattern of ordering *kitābs* laid out in *Al-bidāya*, one of its authoritative references. Yet, Kirmānī’s convention of juridical analyses is not to adopt Al-Marghīnānī’s method of positing legal precepts, adducing previous textual proofs to validate them, and then giving his own exegesis upon the problem. Instead, Kirmānī understands *fatāwā* to mean a collection of individual *responsa* made by a competent *mufī* (jurisconsult). *Responsa* was a “classical” genre of writing, but one that had a purely practical necessity (unlike treatises or commentaries, which offered clarification) known as *istiftā’* (a formal legal opinion). *Istiftā’* arose from any Muslim individual’s consultation with a *mufī* who gave his opinion in the form of a *fatwā* or *responsa* to solve a particular legal problem.

The practically oriented solution given in a *fatwā* by itself could not be transformed into a valid legal precept. However, when a large number of legal cases had accumulated, they often compiled and transmitted them as valid legal opinions. Thus, in turn, as is made explicit in *Fatāwā-i firūzshāhī*’s style, *istiftā’* became a genre of posing an ensemble of possible juridical

questions to resolve disputes between divergent legal opinions or clarifying the appropriateness of specific forms of action. For instance, the norms for *wuḍūʿ* (ablution), a necessary act prior to offering prayer, are demonstrated by the various forms of hypothetical *istiftāʾ* and *responsa* given to them.¹⁹ Or, for instance, in *Kitāb al-farāʾiḍ* (book of inheritance), Kirmānī poses one of the classical problems in inheritance laws. If parents were *kāfirs* (non-believers) who became Muslims, did children born prior to their conversion have the right to inherit property as per the stipulations of Ḥanafī rules? Kirmānī unambiguously gives an affirmative answer without supplying the necessary reasoning found in *Al-sirājīyya* where al-Sajāwandī maintained that the religious denomination of the parents could not prejudice their children.²⁰ This is because Kirmānī's *fatāwā* were destined for extracting applicable rules rather than commenting upon the reasons for the formulation of such rules. Even though individuals might have consulted jurisconsults for praxis, advice, and opinion, doctrinal reasoning for legal norms were grounded in works like *Al-sirājīyya*. The latter explained the reasoning behind a rule, which was not a precedent. Precedent was not a valid form of justifying legal norms in premodern Islamic law, but reason was.

Furthermore, authoritative *fatāwā* follow a pattern of regular collections of legal precepts and reasoning laid out by classical jurists on each topic of juridical doctrine. They could be personal matters like *zakāt* (alms), *nikāḥ* (marriage), *ṭalāq* (divorce), *hajj* (pilgrimage), or those pertaining to civil and public affairs of a Muslim polity such as the principles of taxation for *ʿuṣbr* (tithe) and *kharāj* (land tax). This is particularly the case as these genres of works were meant to be compendia that were read to clarify disagreements among jurists. They do not constitute any resolution by themselves but are merely the opinions of various jurists to whom the author owes a shared tradition of belonging as a member of a particular *madhhab*. However, the manuscript of Kirmānī's work does not reveal any such intricacies and collates a series of questions and answers. The reason for Kirmānī's method can be corroborated by the fact that he relies to a large extent on another

19 Sadr al-Dīn Ya'qūb Muzaffar Kirmānī, *Fatāwā-i firūzshāhī* (MS 22831, Andhra Pradesh Oriental Manuscript Library and Research Institute, Hyderabad), 4–6.

20 Kirmānī, *Fatāwā-i firūzshāhī*, 417.

loose genre of juridical writing, *wāqi'āt* (events) (for example, *Wāqi'āt-i ḥasāmīyya*, *Wāqi'āt-i zahīrīyya*, *Wāqi'āt-i ḥāmīyya*, etc.). *Wāqi'āt* report a collection of real incidents that had taken place (such as legal disputes) and the legal solutions the jurists offered. These reports and *responsa* form the primary texts for Kirmānī's work rather than abstract legal norms. Hence, manuscript copies of the work do not contain commentaries or detailed glosses aside from the clarification of technical terms. Perhaps the absence of these features suggests that Persian *fatāwā* had pragmatic rather than doctrinal uses.

Ḥanafī *sharḥs* (commentaries) in Persian, which appeared later than *fatāwā*, are less juridico-technical in nature but are a key to understanding reading practices. 'Abd al-Ḥaqq Sajādīl Sirhindī's *Sharḥ-i bidāya*, a Persian commentary on Al-Marghīnānī's *Al-bidāya*, survives in a single manuscript, dated 5 November 1694, that was copied by Jān Muḥammad-i Qaum-i Shaikhzāda-i 'Abbāsī from Lahore in present-day Pakistan.²¹ Sajādīl Sirhindī also composed a Persian commentary on 'Ubaid Allāh's *Al-wiqāya al-riwāya fī masā'il al-bidāya*, called *Masā'il-i sharḥ-i wiqāya*. Both works are dedicated to the Mughal Sultan, Aurangzeb 'Ālamgīr. Sirhindī says he undertook the Persian commentary on *Al-bidāya* for the *fāyida* (benefit) of *ahl-i islām* or the "community of Muslims," as he had done with his earlier work, *Masā'il-i sharḥ-i wiqāya*.²² Unfortunately, *tadhbkiras* (biographical compendia) of Ḥanafī jurists do not provide us with much information about Sajādīl Sirhindī. The earliest reference to *Sharḥ-i bidāya* I have been able to trace is John Herbert Harington's (1765–1828) extended essay "Remarks upon the Authorities of Mosulman Law."²³ Harington,

21 The northwestern regions of the Mughal Empire (in particular, the *ṣūba* [province] of Lahore) had become a center for the settlement of itinerant émigré Sunni intellectuals not only from Transoxania but also Iran. Lahore, which was one among Mughal *dār al-salṭanat* or imperial capitals alongside Delhi and Agra, also provided opportunities for the 'ulamā' to gain access to courtly services.

22 'Abd al-Ḥaqq Sajādīl Sirhindī, *Sharḥ-i bidāya*, Ms. 361, India Office Islamic Collection, British Library, 1.

23 John Herbert Harington, "Remarks upon the Authorities of Mosulman Law," *Asiatic Researches; or, the Transactions of the Society instituted in Bengal, For Inquiring into the History and Antiquities; The Arts, Sciences and Literature, of Asia* 10 (1811): 501.

who worked as Persian translator in the British East India Company's Revenue department in Calcutta, had even suggested editing this text. He thought a Mughal Persian commentary on Marghīnānī's work could, after all, aid court officials, British judges, and "native" *maulvis* better appreciate Charles Hamilton's English rendering.²⁴

Several elements within the text indicate that although the work itself is entitled *sharḥ*, it is distinct insofar as *furū' al-fiqh* texts from the thirteenth century onward were composed in Arabic in Transoxania and the Middle East. In the Arabic commentarial tradition, the significant manner of explanation follows the conventional language of *fiqh* texts, which provide various authorial positions such as Al-Qudūrī's *Mukhtaṣar*, *Al-bidāya*, *Al-wiqāya* and Hāfiz al-Dīn al-Nasafī's *Kanz al-daqqā'iq*. Beginning with a classical praise of Allah in Arabic, Sajādīl Sirhindī's manuscript is replete with interlinear glosses on Qur'anic verses and *qawl-i paigambar* (*ḥadīth*, or the sayings of the prophet). Notably, Sajādīl Sirhindī maintains the Arabic stylistic common to *fatāwās* rather than commentaries, as he indexically refers to *Al-kāfi* and *Ghāyat al-bayān* as authorities by the phrase *wa kadhā fi* (such as it is in) to enumerate the legal norm. Had it been a commentary *stricto sensu*, *Sharḥ-i bidāya* would have instead employed *huwa kadhā wa kadhā* (it is . . . such and such) to lay out the definition and explain it.²⁵

How did Persian commentaries exhibit the syllogistic argumentation method deployed in *fiqh* texts? Sajādīl Sirhindī's recourse to *qiyās* (analogical deduction) in *kitāb dar bayān-i ṭabārat* (*kitāb al-ṭabāra* in Arabic; the "book on purification") is limited to the contingent and conventional meaning of *qiyās*, the fourth source of law, rather than the hierarchized ordering of argumentation laid out in the formal doctrine on *qiyās*.²⁶ Sajādīl Sirhindī

24 *Maulvis* were Muslim legal scholars that the British government recruited to facilitate the interpretation of laws.

25 Wheeler, "Identity in the Margins," 188.

26 Sajādīl Sirhindī, *Sharḥ-i bidāya*, 10. In the conventional norms of *fiqh* treatises, *kitāb al-ṭabāra* constitutes the introductory book. Charles Hamilton omitted both the first book and the second on *kitāb al-ṣalāh* or the "book on prayer." Rather, he begins with the third book, *kitāb al-zakāt* (book on alms) as the first. This misrepresentation owes to the presumption that purification and prayer were purely ritualistic aspects of religious practice with no consequences for legal relations.

most often applies only a fourth type based on similarity between two cases wherein the original legal norm becomes valid in a new case that displays shared features with the old case. Rather than construct a syllogistic proposition, Sajādīl Sirhindī describes the new case as embodying similar features. He eschews from explicitly indicating the *ratio legis*, “the attribute common to both the new and original cases.”²⁷

Sharḥ-i hidāya occults distinctions of “paraphrasing” and “running” commentary since the author’s intention is not to condense the main argument. Instead, he provides a loose rendering of the key doctrinal evidence contained in *Al-hidāya*, that is, the “sources” that formed the basis of Al-Marghīnānī’s writings in the first place. *Sharḥ-i hidāya* is more appropriately a gloss on juridical texts that falls within the category called *ḥāshiya* (supercommentary) rather than *sharḥ*. In premodern manuscripts, *ḥāshiya* is composed around the text of a treatise or its *sharḥ* filling the margins. *Ḥāshiya* does not appear independently in manuscripts since it is intended for the reader to interpret obscure individual elements of a text (terms, propositions, grammatical particularities, logical categories implicit in an argument, etc.). In Sajādīl Sirhindī’s work, *ḥāshiya* takes center place and is further glossed in interlinear margins by the hand of a reader. Manuscripts like these were perhaps notes that jurists compiled and used as teaching aids in madrasas.

Conclusion

Fatāwā and *sharḥs* constitute a significant corpus to understand methods by which Ḥanafī jurists practiced their juridical thinking, interpreted, and transmitted their ideas for future generations of scholars. In the Indian context, the examination of manuscripts reveals juridical hermeneutic practices that are obscured in the highly polarized manner in which the ‘*ulamā*’

27 Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), 23.

(learned scholars) have been represented in the historiography.²⁸ Their associative role has been analyzed purely in the realm of juridical and political services they offered to sultans in return for land grants and the maintenance of educational institutions. More often, they are assumed to represent the “orthodox” wing of premodern Islam in India.

The study of juridical texts and manuscripts not only reveals complexity within doctrinal argumentation but also allows for the differentiation of juridical functions that the ‘*ulamā*’ held. Moreover, Persian renderings of Islamic jurisprudence, which do not possess Arabic-style, technically specific formulations, exhibit “hybridity” in their method. Partly, this is due to the fact that Arabic was the theological language across Islamic cultures. It was the source of *sunna* or the foundational texts for *shari‘a*: the Qur‘ān and the *ḥadīth* (prophet’s sayings) as well as “classical” writings (eighth to twelfth centuries) that established patterns for the juridical genre. On the contrary, Persian *fiqh* works pose challenges, as they do not strictly fall into distinct categories of commentarial methods that had existed in the historical genealogy of Islamic thought. The significance of Persian juridical writings, be they *fatāwā* or *sharḥs*, has to be located in the praxis of Islamic law among premodern Ḥanafī jurists but also the extent to which they offered juristic assistance to sultans, nobility and administrative officers in the “implementation of law.”

Persian, the administrative and court language in large parts of the Indian subcontinent, acted as an intermediary for the filtration of Islamic legal precepts; it was also, as we have seen, one of the languages in which idioms of Islamic law had been extensively produced in the form of *fatāwā* and commentaries. No doubt, various forms of law-making other than *fiqh*-based law were prevalent during the Islamicate rule of the Delhi Sultanates and the Mughal Empire. These laws could range from *zawābit* (orders) and

28 See Aziz Ahmad, “The Role of Ulema in Indo-Muslim History,” *Studia Islamica* 31 (1970): 6, for a general trans-historical evaluation. Historiography on the Delhi Sultanates and the Mughal Empire privileges the spiritual role played by Sufi saints due to their “heterodox” and “mystic” visions of polity, religion, and social interaction. The ‘*ulamā*’ are often portrayed negatively as opposed to mysticism, while much of their writings have not yet been studied.

dastūr al-ʿamal (regulations) promulgated by rulers in Persian to “customary” and institutional practices prevalent in different parts of the subcontinent that are available in regional languages. Nevertheless, the use of Persian was not merely limited to mundane procedures of legal instruments, court documents, and attestations. Persian also contained an idiom of law-making within the contours of *fiqh*, to whose manuscript and intellectual histories we need to be attentive in understanding the premodern legal past of the subcontinent. In this article, I have laid out a set of themes and propositions on the genealogy of the Islamic legal tradition in the region, the specificities in Persian works, and the epistemological problems related to their interpretation within the general category of “law” as we understand it today. The dialectic between jurisprudence, law-making, and implementation—that is, the juridical domains, which I have dealt with in a prefatory form—configured as much the political domains of Persian in premodern Hindūstān.