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## Beyond diversity Mughal legal ideology and politics

Corinne Lefèvre

► **To cite this version:**

Corinne Lefèvre. Beyond diversity Mughal legal ideology and politics. Thomas Ertl; Gijs Kruijtzter. Law Addressing Diversity. Pre-Modern Europe and India in Comparison (13th to 18th Centuries), De Gruyter, pp.116-141, 2017. halshs-01955956

**HAL Id: halshs-01955956**

**<https://shs.hal.science/halshs-01955956>**

Submitted on 13 Jan 2020

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DE GRUYTER  
OLDENBOURG

*Gijs Kruijtzter,  
Thomas Ertl (Eds.)*

# LAW ADDRESSING DIVERSITY

PREMODERN EUROPE AND INDIA  
IN COMPARISON (13TH - 18TH CENTURIES)



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Cover image: illustration to the German jurist Sebastian Brant's late fifteenth-century satire *Daß Narrenschyff ad Narragoniam* (The Ship of Fools). This is the first time that Lady Justice is depicted with a blindfold. Here this attribute seems to have a negative connotation (because of the jester putting it on), but over the following century it came to represent Justitia's blindness to the background of those before her in a positive sense. Woodcut probably by Albrecht Dürer, 1494.

ISBN 978-3-11-042718-9

e-ISBN (PDF) 978-3-11-042332-7

e-ISBN (EPUB) 978-3-11-042340-2

#### **Library of Congress Cataloging-in-Publication Data**

A CIP catalog record for this book has been applied for at the Library of Congress.

#### **Bibliografische Information der Deutschen Nationalbibliothek**

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliographie; detailed bibliographic data are available in the Internet at <http://dnb.dnb.de>.

© 2017 Walter de Gruyter GmbH, Berlin/Boston

Cover image courtesy Sächsische Landesbibliothek – Staats- und Universitätsbibliothek Dresden.

Typesetting: Dr. Rainer Ostermann, München

Printing: CPI books GmbH, Leck

☺ Printed on acid free paper

Printed in Germany

[www.degruyter.com](http://www.degruyter.com)

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Corinne Lefèvre  
**Beyond diversity**

Mughal legal ideology and politics

**Introduction**

In his *Muntakhab al-tawarikh*, the historian ‘Abd al-Qadir Bada’uni (d. c. 1615) recorded the following dispute between the Mughal emperor Akbar (r. 1556–1605) and the scholars (ulema, sing. ‘*alim*) of his court:

The first of the questions (*musa’il*) which the emperor asked in these days<sup>1</sup> was this: ‘How many freeborn women may a man legally marry by *nikah*?’ The ulema answered that four was the limit fixed by the Prophet. The emperor thereupon remarked that in his early youth he had not regarded the question and had married what number of women he pleased [...], [but] he now wanted to know what the remedy (‘*ilaj*) [for his situation] was. Each [of the present] said something [different]. Then, the emperor remarked that Shaikh ‘Abd al-Nabi<sup>2</sup> had once told him that one of the *mujtahids*<sup>4</sup> had allowed as many as nine wives. Some of the ulema replied that [...] some had even allowed eighteen from a too literal translation of [...] the Qur’an [...]; but this tradition (*riwayat*) is rejected. [...] After much discussion (*radd-u-badal*), the ulema, having collected all the different traditions (*jam’-i riwayat-i mutanauwi’*) on the subject, opined (*fatwa dadand*) that, by *mu’ta* [temporary marriage], a man was allowed (*mubah*) to marry any number of wives he pleased and that such marriages were considered licit (*ja’iz*) by Imam Malik Rahmatallah<sup>5</sup> [...]. [At this point] Naqib Khan fetched a copy of the *Muwatta* by Imam Malik, and pointed to a Hadith according to which *mu’ta* was forbidden (*man’a*).

[Another] night [...], the emperor sent for me [...] and asked me what my opinion was on this subject. I said: ‘The conclusion to be drawn from so many conflicting traditions and different schools of law (*riwayat-i mukhtalaf wa mazahib-i gun-a-gun*) in a word is this: the followers of Imam Malik Rahmatallah and the Shiites are unanimous in looking upon *mu’ta* as permissible (*mubah*); Imam Shafi’i and the great Imam [Hanifa]<sup>6</sup> [...] look upon *mu’ta* as

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1 That is to say, in the period following 1575, when Akbar began to stage religious debates in the ‘*ibadat khana* (house of praise) of his new capital Fatehpur Sikri.

2 *Nikah* is the “regular” form of marriage in Islam.

3 Between 1566 and 1579, Shaikh ‘Abd al-Nabi (d. 1583) served as *sadr al-sudur*, the head officer in charge of *madad-i ma’ash* grants (revenue of tax-free lands given in charity to religious or worthy individuals) and of the appointment of judges throughout the empire.

4 A *mujtahid* is an individual who is qualified to exercise *ijtihad* (lit. “exerting effort”, independent reasoning) on questions concerning the sharia.

5 Malik b. Anas (d. 796) was the eponymous founder of the Maliki school of law (*mazhab*).

6 Al-Shafi’i (d. 820) and Abu Hanifa (d. 767) were the eponymous founders of the Shafi’i and

illegal (*haram*). But should a *qazi* [judge] of the Maliki school sign an order (*hukm*) [making *mu'ta*] lawful, *mu'ta* also becomes lawful according to the great Imam [Hanifa] [...].<sup>7</sup> This pleased His Majesty very much [...].

The emperor then said: 'I appoint Qazi Husain 'Arab Maliki as *qazi* for this case (*mas'ala*) [concerning my wives] [...].<sup>7</sup> Qazi Husain immediately [...] issued a decree according to his own school of law making *mu'ta* licit (*ja'iz*). [...] From this day onward, the road of opposition and discord (*rah-i khilaf wa ikhtilaf*) lay open until the advent of the time of *ijtihad*.<sup>7</sup>

This passage is interesting for several reasons. First, and in view of the comparative perspective underlying the present volume, the story narrated by Bada'uni interestingly echoes another legal conflict which had opposed political and religious authorities a few decades earlier in Europe, a dispute whose roots also lay in matrimony and which had eventually similarly resulted in the emancipation of royal power from ecclesiastical control: the reference is here, of course, to Henri VIII of England's (r. 1509–1547) clash with the Pope regarding the annulment of his marriage with Catherine of Aragon and to the ensuing creation of an independent Church of England with the king as its supreme head. Second, and more importantly for the purpose of this essay, the episode recorded by Bada'uni encapsulates a number of important points concerning the legal dimensions of the Mughal empire.

The first and most salient issue is the absence of a unanimously agreed version of sharia (Islamic law) throughout the Muslim world in general and in Mughal India in particular: even though the Hanafi *mazhab* is often said to have prevailed within the empire, the events described by Bada'uni indicate, along with other pieces of evidence, that this hegemony was far from being absolute and that "pragmatic eclecticism"<sup>8</sup> across the boundaries of other Sunni (Maliki, Shafi'i) as well as Shiite legal schools also existed. Besides the inner diversity of Islamic law, Mughal rulers also had to deal with the existence of an altogether different set of socio-religious norms that have long been deemed binding for the vast majority of their subjects, that is to say the Hindu *dharma*. Just as sharia, "Hindu Law" was, in practice, equally plural and made up of multiple layers

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Hanafi schools of law respectively.

<sup>7</sup> I have slightly modified the English translation given in 'Abd al-Qadir Bada'uni, *Muntakhab al-tawarikh*, translated by G. S. A. Ranking, W. H. Lowe, T. W. Haig, 3 vols. Delhi: Renaissance Publishing House, 1986 (reprint), II: 211–213. For the Persian original, see 'Abd al-Qadir Bada'uni, *Muntakhab al-tawarikh*, Kabir al-Din Ahmad, M. A. Ahmad 'Ali, W. N. Lees (eds.), 3 vols. Calcutta: Asiatic Society of Bengal, 1864–1869, II: 207–210.

<sup>8</sup> The phrase is borrowed from Ahmed Fekry Ibrahim, 'The Codification Episteme in Islamic Juristic Discourse between Inertia and Change', *Islamic Law and Society* 22 (2015): 157–220, here 159, where the reader will find an in-depth reflection on this form of pragmatism in Islamic law.



of codes such as special rules for castes (*jatidharma*), regions (*deshadharna*) or kingdoms (*rajadharna*).<sup>9</sup> As pointed out by Donald R. Davis, “one partially unifying feature of these social locations of the law was their relationship to the jurisprudential tradition of *dharmashastra*, a huge scholastic corpus of Sanskrit texts and commentaries devoted to religious and legal duty.”<sup>10</sup> The existence of these two different sets of religiously inspired laws did not mean, however, that they exclusively applied to Muslims and Hindus respectively. As several scholars have demonstrated in recent years, Hindus did not hesitate to turn to sharia and the *qazis*’ courts for purposes of notarial registration, to sustain their claims in litigation or to obtain rulings more to their own advantage – all such cases signaling the reality of forum shopping for the non-Muslim subjects of the Mughal empire.<sup>11</sup> In addition to the norms deriving from the Muslim and Hindu traditions, a third set of rules – *zawabit* (sing. *zabitat*) or state legislation – that may be roughly equated with administrative *cum* penal law also impacted a number of aspects of Mughal society. Originating in the monarchs’ *siyasa* (political) power and their ensuing legislative capacity – a capacity which was, however, far from unanimously accepted by the ulema, this set developed cumulatively through the *farmans* or edicts of succeeding emperors.<sup>12</sup> To sum up, then, there

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**9** Ingo Strauch, *Dharma*. In *Brill’s Encyclopedia of Hinduism*, Knut A. Jacobsen, Helene Basu, Angelika Malinar and Vasudha Narayanan (eds.), vol. 2, 736–743, Leiden: Brill, 2010.

**10** Donald R. Davis Jr., *Centres of Law: Duties, Rights and Jurisdictional Pluralism in Medieval India*. In *Legalism. Anthropology and History*, Paul Dresch, Hannah Skoda (eds.), 86–113, Oxford: Oxford University Press, 2012, here 88.

**11** Farhat Hasan, *State and Locality in Mughal India. Power Relations in Western India, c. 1572–1730*, Cambridge: Cambridge University Press, 2004, ch. 6. M. L. Bhatia, *The Ulama Islamic Ethics and Courts Under the Mughals. Aurangzeb Revisited*, New Delhi: Manak, 2006, ch. 6. Nandini Chatterjee, *Reflections on Religious Difference and Permissive Inclusion in Mughal Law*. *Journal of Law and Religion* 29:3 (2014): 396–415. See also Sanjay Subrahmanyam, *Peasants before the Law: Recent Historiography on Colonial India. Études rurales* 149–150 (1999): 199–209, here 200, for an example of Christian appeal to the *qazi*’s court.

**12** Even though some scholars have argued that the Mughals continued to stick to the *tura-i chingizi* – a body of rules supposedly instituted during Chingiz Khan’s reign and also referred to as *yasa* – long after they settled in India, a close scrutiny of contemporary Indo-Persian sources shows that the impact of the *tura* on Mughal law-making was actually very limited and its use mostly confined to situations of acute political crises (especially succession struggles). See Corinne Lefèvre, *Recovering a Missing Voice from Mughal India: The Imperial Discourse of Jahāngīr (r. 1605–1627) in his Memoirs*. *Journal of the Economic and Social History of the Orient* 50:4 (2007): 452–489, here 466, for a demonstration of this point during Jahangir’s reign, and Mansura Haidar, *The Yasai Chingizi (Tura) in the Medieval Indian Sources*. In *Mongolia. Culture, Economy and Politics (Indian-Mongolian Assessment)*, S. Bira, M. Haidar, R. C. Sharma, K. Warikoo (eds.), 53–66, Delhi: Khama Publishers, 1992, for an analytical survey of Indo-Persian materials bearing on *tura*.



were at least three (complementary and in some cases concurrent) normative frameworks coexisting within the Mughal empire (sharia, *dharmā* and *zawābit*), none of which had achieved a significant degree of standardization by the heyday of the dynasty in the 1650s. Besides, all of them had to accommodate the local customs and usages (*urf-u-'ada*) ingrained in the countless villages, towns and cities whose aggregation constituted the imperial dominions.

How the Mughals addressed the legal diversity that characterized their territories is the second major issue raised by the account of Bada'uni. It is also the main focus of the present article, which is primarily concerned with the legal ideology and politics of the Mughal empire and not, or only very secondarily, with jurisdictional pluralism and the ways in which subordinate groups and individuals interacted with, and manipulated to their own ends, the legal diversity and pluralism the dynasty allowed for.<sup>13</sup> If the imperial perspective adopted in this essay may appear outdated to specialists of the European and Ottoman early modern powers (fields in which state law and the royal discourse on law have long received considerable attention<sup>14</sup>), it is worth emphasizing here that the Muslim polities which came to dominate large swathes of South Asia between the thirteenth and the eighteenth centuries have so far rarely been examined from this point of view.<sup>15</sup> Far from ambitioning to fill such a vast historiographical gap, the present contribution simply aims at pointing out some of the avenues explored by the Mughals to think about and to manage the legal diversity of their territories.

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**13** For examples of the recent historiographical emphasis on legal pluralism in early modern empires, see: Lauren Benton, *Law and Colonial Cultures. Legal Regimes in World History 1400–1900*, Cambridge: Cambridge University Press, 2002, for a global perspective; Karen Barkey, *Aspects of Legal Pluralism in the Ottoman Empire*. In *Legal Pluralism and Empires, 1500–1850*, Lauren Benton, Richard J. Ross (eds.), 83–108, New York: New York University Press, 2013, on the Ottoman case; Hasan 2004, and Chatterjee 2014 on the Mughals.

**14** See e. g. Lauren Benton, Richard J. Ross, *Empires and Legal Pluralism: Jurisdiction, Sovereignty, and Political Imagination in the Early Modern World*. In *Legal Pluralism and Empires, 1500–1850*, Lauren Benton, Richard J. Ross (eds.), 1–17, New York: New York University Press, 2013. And Jeroen Duindam, Jill Harries, Caroline Humfress, Nimrod Hurvitz, Introduction. In *Law and Empire. Idea, Practices, Actors*, Jeroen Duindam, Jill Harries, Caroline Humfress, Nimrod Hurvitz (eds.), 1–22, Leiden: Brill, 2013, for two contrasted assessments of this historiographical legacy.

**15** For a similar assessment of the historiography of the Mughal empire, see M. Reza Pirbhai, *A Historiography of Islamic Law in the Mughal Empire*. In *The Oxford Handbook of Islamic Law*, ed. Anver M. Emon and Rumea Ahmed (eds.). Oxford online, 2016, online available under: <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199679010.001.0001/oxford-hb-9780199679010-e-65> (10/04/2016).

Except at its very margins, the rulers did not, by and large, attempt to interfere with “Hindu law”: albeit the practice of *sati* (ritual burning of widows) was, for instance, strongly discouraged, it was never officially prohibited by the state.<sup>16</sup> The situation was altogether different concerning the sharia and its traditional exponents, the ulema. True, the inner diversity of Islamic law was at times used by the monarchs to their own benefit, as has been illustrated above with the case of Akbar’s appointment of a Maliki (rather than a Hanafi) *qazi* to make his multiple marriages lawful. Another well-known example of “pragmatic eclecticism” as practiced by Mughal rulers dates from the time of Akbar’s great-grandson Aurangzeb (r. 1658–1707): while the monarch actively participated in the imperial project of legal centralization and homogenization through his commissioning of the *Fatawa-i ‘Alamgiri* (1664–1672) – the largest compendium of Hanafi jurisprudence (*fiqh*) ever produced in Mughal India on which more will be said below, he did not hesitate to contravene the legal opinions (*fatawa*, sing. *fatwa*) recorded in the text when the latter did not suit his political needs. If we are to believe the *Ahkam-i ‘Alamgiri* attributed to Hamid al-Din Khan, the emperor refused to act according to a decision by the chief *qazi* concerning the fate of war prisoners because he deemed it too lenient. Instead, he gave the judge the following instructions: “This decision [is] according to the Hanafi school; decide the case to some other school, so that control over the kingdom may not be lost. Ours is not the rigid Shia creed, that there should be only one tree in an entire village. Praised be God! There are four schools [of Sunni law] based on truth, [each] according to a particular age and time.”<sup>17</sup> The *qazi* complied and proposed a new decision supposedly based on the *Fatawa-i ‘Alamgiri* – and therefore in accordance with the Hanafi *mazhab* – but sentencing the prisoners to death, to which Aurangzeb readily agreed.<sup>18</sup>

If, then, the Mughal monarchs occasionally manipulated the inner diversity of Islamic law (and its accompanying contradictions and ambiguities) for the sake of political expediency,<sup>19</sup> they more generally tended to consider it an impediment to the central authority they strove to establish in their dominions, and they therefore developed a number of strategies to absorb it. One of them was

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<sup>16</sup> See e. g. Bada’uni 1986, II: 388.

<sup>17</sup> Hamid al-din Khan, *Ahkam-i ‘Alamgiri*, translated by J. Sarkar, Anecdotes of Aurangzib, Calcutta: M. C. Sarkar & Sons, 1925, 141–142.

<sup>18</sup> The episode is also analyzed by Alan M. Guenther, Hanafi *Fiqh* in Mughal India: The *Fatāwā-i ‘Ālamgīrī*. In *India’s Islamic Traditions, 711–1750*, Richard M. Eaton (ed.), 209–230, Delhi: Oxford University Press, 2003, 224.

<sup>19</sup> Far from being an exclusive imperial prerogative, manipulation of sharia was a widespread practice among ulema as well as subordinate groups, both Muslims and Hindus (Hasan 2004, ch. 5 and 6).

the elevation of the ruler to the status of law-giver and supreme legal authority in the empire – an option that was inaugurated by Akbar in the second part of his reign, as suggested by Bada'uni in the last sentence of the passage quoted above. In fact, his mention of “the advent of the time of *ijtihad*” is a direct reference to the promulgation, in 1579, of the famous *mahzar* – a document signed by the principal ulema of the empire and declaring the monarch's status to be higher than that of the *mujtahids*, thereby emancipating his domination from the control of Muslim jurists.<sup>20</sup> Such a claim was not, however, limited to Mughal territories but extended to the wider Islamic world and endowed Akbar with a juridical-religious authority theoretically surpassing that of his Safavid and Ottoman competitors.<sup>21</sup> As has been argued by Azfar Moin,<sup>22</sup> Akbar's bold step in legal matters may be linked to the well-known messianic pretensions the ruler nurtured in the context of the upcoming Islamic millennium (1591–1592), one of the Mahdi (Messiah)'s hallmarks being his ability to restore justice to the world through the reformation of religious law. Fortified by Akbar's success in establishing the emperor's superiority over the ulema in matters of legal authority and by the capacity of his successors Jahangir (r. 1605–1627) and Shah Jahan (r. 1628–1658) to uphold such a balance of power, Aurangzeb was able to adopt a more flexible and accommodating attitude towards the jurists and to entrust them with the unfinished imperial project of standardizing Islamic law. The aforementioned *Fatawa-i 'Alamgiri* is the best-known result of this process of religious-legal homogenization which, as rightly pointed out by Muzaffar Alam and Sanjay Subrahmanyam, ran parallel to increased imperial legislative activity and visibility in the non-religious domains.<sup>23</sup>

The third point raised – albeit more indirectly – by the account of Bada'uni is the question of the evidence available to the historian willing to reconstruct the legal life and proceedings of the Mughal empire. Unlike the Ottoman case which is documented by a rich corpus of *sijills* (registers of cases from the courts of the *qazis*), the Mughal judicial records are much less abundant, especially for the period preceding the middle of the seventeenth century, a scarcity that should

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<sup>20</sup> Having stated the superior status of the Mughal as *sultan-i 'adil* (“just ruler”), the *mahzar* further acknowledges his ability to opine on religious questions (*musa'il-i din*) on which the *mujtahids* do not agree but also to issue new rulings (*hukm*), provided they do not contradict the Qur'an and are advantageous to mankind (Bada'uni 1864–1869, II: 271–272, and 1986, II: 279–280).

<sup>21</sup> Francis W. Buckler, A New Interpretation of Akbar's 'Infallibility' Decree of 1579. *Journal of the Royal Asiatic Society, New Series* 56: 4 (1924): 591–608.

<sup>22</sup> A. Azfar Moin, *The Millennial Sovereign. Sacred Kingship and Sainthood in Islam*, New York: Columbia University Press, 2012, ch. 5.

<sup>23</sup> Muzaffar Alam, Sanjay Subrahmanyam, Introduction. In *The Mughal State (1526–1750)*, Muzaffar Alam, Sanjay Subrahmanyam (eds.), 1–71, Delhi: Oxford University Press, 2000 (reprint), here 31.

be understood in connection with the absence of centralized imperial archives, with each judge probably keeping his own records.<sup>24</sup> A number of disseminated archival collections do, however, shed occasional light on local urban and rural transactions and disputes. This is for instance the case with two sets of seventeenth-eighteenth-century documents produced in Surat and Cambay that have been thoroughly examined by Farhat Hasan in his *State and Locality*; one should also mention the “proceedings” of the Benares *dharmasabhas* or *parishads* (councils) of Brahmins – whose function was to settle disputes or prescribe penances in matters of Hindu law through oral or written *responsa* (*nimayapatra*) – on which Rosalind O’Hanlon has recently worked extensively.<sup>25</sup> The relative dearth of Mughal judicial records notwithstanding, a systematic and in-depth study of the documents and collections so far identified still remains a desideratum today.

This is all the more true of the vast corpus of doctrinal and jurisprudential literature which, in spite of its particular value for understanding the complex intellectual trajectory of law(s) and legal traditions(s) in Mughal India, has generally been left out by historians of the empire. Jurisprudential compilations and compendia especially, whether they belonged to the scholarly tradition of *fiqh* or of *dharmashastra*, have long been discarded on account of their supposed aloofness *vis-à-vis* the world of judicial practice and the Mughal political context more generally. Following in the steps of Wael B. Hallaq who, back in the mid-1990s, had already argued for a much more composite nature of legal manuals, Mouez Khalfaoui has recently made a similar case for the *Fatawa-i ‘Alamgiri* by pointing out the fact that the authors of the digest systematically rejected the opinions of the Central Asian branch of the Hanafi *mazhab* when it came to the treatment of non-Muslims and instead favored earlier Iraqi Hanafi jurists and their more accommodating *fatwas* regarding *kafirs* (or unbelievers).<sup>26</sup> As shown by Ali

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**24** Pirbhai 2016, who also provides a useful survey of Mughal legal documents.

**25** Hasan 2004, ch. 5 and 6; Rosalind O’Hanlon, Speaking from Siva’s temple: Banaras scholar households and the Brahman ‘ecumene’ of Mughal India. *South Asian History and Culture* 2:2 (2011): 253–277 and Rosalind O’Hanlon, Letters Home: Banaras pandits and the Maratha regions in early modern India. *Modern Asian Studies* 44:2 (2010): 201–240. For other recent analyzes of legal documents produced in the Mughal empire, see Bhatia 2006, ch. 6; Chatterjee 2014, and Nandini Chatterjee, *Mahzar-namas* in the Mughal and British Empires: The Uses of an Indo-Islamic Legal Form. *Comparative Studies in Society and History* 58:2 (2016): 379–406.

**26** Wael B. Hallaq, Model *Shurūṭ* works and the dialectic of doctrine and practice. *Islamic Law and Society* 2:2 (1995): 109–134; Mouez Khalfaoui, *L’islam indien: pluralité ou pluralisme*. Frankfurt am Main: Peter Lang, 2008 and Mouez Khalfaoui, Together but separate: How Muslim scholars conceived of religious plurality in South Asia in the seventeenth century. *Bulletin of the School of African and Asian Studies* 74:1 (2011): 87–96.

Anoosahr's essay in this volume, the *Fatawa-i 'Alamgiri* are also reflective of the changed balance of power between the monarch and the ulema since the time of the Delhi Sultanate. Both contributions therefore rightly emphasize that the *Fatawa-i 'Alamgiri* should be seen as the result of a dynamic dialogue between the Hanafi juridical tradition and the socio-religious and political conditions prevailing in contemporary Mughal India. In addition, these fruitful insights into the *Fatawa-i 'Alamgiri* are important because they open a promising path for a larger and much needed (re)consideration of the *fiqh* literature produced in the empire.<sup>27</sup> The same possibly holds true for the numerous *dharmashastras* written under Mughal domination, especially of those which were sponsored by subordinate Raja rulers – like Mitramishra's twenty-two-volumes *Viramitrodaya* patronized by Bir Singh Deo of Orchha in the 1630s<sup>28</sup> – or those which were composed by Brahmin intellectuals connected to the Mughal court, such as the descendants of the famous Narayana Bhatta.<sup>29</sup> As a matter of fact, an interesting way to look at the question of law and diversity in pre-colonial India would be to investigate more closely and more comparatively the parallel genres of legal opinions and manuals in the *fiqh* and *dharmashastra* traditions in the perspective of an intellectual and socio-political history of law: such an investigation would usefully complement the emphasis that has been laid on the “hard evidence” of judicial records in the past decades and also provide a methodological tool for comparison with European *responsa*.

To conclude this brief survey of the sources at hand for the study of law(s) in the Mughal empire, mention should be made of the official documents and texts emanating from central power, be it in the guise of *farmans*, *dastur al-'amals* (rules of governance), letters or chronicles. True, the latter do shed light on the activities of emperors as law-makers and judges, as well as on the judicial functions of a number of officials (*subadar*, *faujdar*, *kotwal*, etc.) besides the *qazi*. It is worth emphasizing, however, that the royal ordinances contained in such documents seem to have been seldom collected into more comprehensive codes of law and to have circulated in this form throughout the empire: despite the very

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<sup>27</sup> No systematic description of this corpus has been attempted to this day. Nor is there any equivalent for the Mughal period of Zafarul Islam's work on *fatawa* literature under the Delhi Sultanate, see Zafarul Islam, *Fatāwā Literature of the Sultanate Period*. Delhi: Kanishka, 2005.

<sup>28</sup> For a brief description of this monumental text, see Pandurang Vaman Kane, *The History of Dharmasāstra (Ancient and Mediaeval Religious and Civil Law)*, 5 vols. Poona: Bhandarkar Oriental Research Institute, 1930–1962, here I: 440–446.

<sup>29</sup> For further details on their works, see: Kane 1930–1962, I: 432–440. Dara N. Marshall, *Mughals in India. A bibliographical survey of manuscripts*. London, New York: Mansell Publishing, 1967, n°1679 and 1401.

heteroclit materials it included, the *A'in-i Akbari* – the second part of the well-known *Akbar Nama* by Abu'l Fazl (d. 1602) – is probably the one text that most closely approximates this, admittedly Western, idea of a general code of law, as is indeed shown by the text's swift translation into English in the 1770s under the evocative title of *The Institutes of emperor Akbar*.<sup>30</sup> As to the materials explicitly delineating the emperors' vision of the legal diversity inherent to their dominions or recording the particulars of their discussions on this topic with contemporary jurists, they are (at least to my knowledge) remarkably few. One such source is Bada'uni's *Muntakhab al-tawarikh*, but it should be pointed out that, in the end, the information the text provides on the precise content of the religious-legal debates held at Akbar's court are quite scarce, the passage quoted as an opening to this essay being actually the only one detailing the proceedings of such exchanges. By contrast, the recently discovered *Majalis-i Jahangiri* by 'Abd al-Sattar ibn Qasim Lahauri (d. after 1619) bears ample evidence of Jahangir's profound interest in matters of law and of the various reactions his ambitions in the legal domains elicited from within the ranks of the empire's law experts. It is therefore a good case study for thinking about the dynasty's legal ideology and politics.

## Imperial perception and management of legal diversity in the *Majalis-i Jahangiri*

Building on the literary traditions of *munazara* (disputation) and *mal'fuzat* (teachings of a Sufi master), the *Majalis* are at once a record of the night sessions held at Jahangir's court between 1608 and 1611 and a spiritual handbook (*dastur al-'amal*) for the newly enrolled disciples of the monarch.<sup>31</sup> As a *mal'fuzat*, the *Majalis*' main function was to unveil the messianic nature of the monarch who called himself a “universal manifestation” (*mazhar-i kull*) of God – something Sattar skillfully manages to do through the narration of Jahangir's oneiric encounters with the

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**30** Even though imperial *dastur al-'amals* multiplied in the course of the seventeenth century, their content and reach were generally more circumscribed. For further details on the context and purpose of the *A'in-i Akbari*'s English translation by Francis Gladwin, see Robert Travers, *Ideology and Empire in Eighteenth-Century India. The British in Bengal*, Cambridge: Cambridge University Press, 2007, especially ch. 3.

**31** For a short intellectual biography of the author of the *Majalis-i Jahangiri*, see Corinne Lefèvre, 'Abd al-Sattar b. Qasim Lahauri. In *Encyclopedia of Islam, THREE*, Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas Everett Rowson (eds.), fasc. 1, 6–8, Leiden: Brill, 2015.

divine,<sup>32</sup> the miracles he performed thanks to his capacities as a seer<sup>33</sup> and, most importantly for the present purpose, the discussions he conducted with a wide range of religious specialists, from Brahmins and Muslim ulema and Sufis to Jesuit and Jewish scholars.<sup>34</sup> These discussions are highly instructive on several accounts. First, the religious diversity of their participants testifies to the breadth of the monarch's pretensions. Second, most of these debates concentrate on the legal dimensions of the religious traditions represented at court with, however, the exception of the exchanges with the Jesuits which focused on doctrinal and scriptural questions.<sup>35</sup> Third, Jahangir's interventions in the discussions consistently illustrate his determination to act upon the 1579 *mahzar* and to follow in the steps of his predecessor Akbar as supreme legal authority of the empire and of the various communities it included, be they Muslim or not. By positioning himself along such lines, the monarch also meant to demonstrate his capacity to renew (*tajdid*) the "world of religion" through the exercise of his intellectual faculties (*'aql*), which he considered an independent source of knowledge.

Before proceeding to the analysis of the religious-legal discussions recorded in the *Majalis-i Jahangiri*, it is worth stressing the fact that the text also contains a

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32 'Abd al-Sattar ibn Qasim Lahauri, *Majalis-i Jahangiri*, A. Naushahi M. Nizami (eds.), Tehran: Miras-i Maktub, 2006, 26–27, 58 and 110–111.

33 See e. g. 'Abd al-Sattar 2006, 93–94.

34 For brief descriptions of some of these exchanges, see: Reyaz Ahmad Khan, Jahangir on *Shias* and *Sunnis* in *Majalis-i Jahangiri*. In *Proceedings of the Indian History Congress, 72nd Session*, 302–307. Aligarh: Aligarh Historian Society, 2012 and Reyaz Ahmad Khan, Jahangir and Muslim Theology-Discussions Reported in the *Majalis-i Jahangiri*. In *Proceedings of the Indian History Congress, 71st Session*, 236–242. Calcutta: Indian History Congress, 2011; Shireen Moosvi, The Conversations of Jahangir 1608–11: Table Talk on Religion. In *Proceedings of the Indian History Congress, 68th Session*, 328–332, Delhi: Indian History Congress, 2008. For more in-depth analyses, see Muzaffar Alam, Sanjay Subrahmanyam, Frank disputations: Catholics and Muslims in the court of Jahangir (1608–11). *Indian Economic and Social History Review* 46:4 (2009): 457–511 and Anna Kollatz, *Inspiration und Tradition. Strategien zur Beherrschung von Diversität am Mogulhof und ihre Darstellung in Mağālis-i Ġahāngirī (ca. 1608–11) von 'Abd al-Sattār b. Qāsim Lāhōrī*, Berlin: EB-Verlag, 2016, especially 117–130 and 216–278.

35 For Jahangir's discussion of Judaism's prescriptions for marital life, see 'Abd al-Sattar 2006, 265–266, 268. Interestingly enough, the discussion was based on the *Suhuf-i Ibrahim* (Scrolls or Book of Abraham) which the emperor had had translated into Persian by "Yusuf the Jew." Albeit mentioned in the Qur'an, the *Suhuf-i Ibrahim* are generally considered a lost body of scripture. One is therefore left to wonder what text was actually translated at the Mughal court, even though the nature of the subjects discussed would point in the direction of the Torah (mentioned as such in the text p. 118 as *taurūt*). For further details on the Jewish presence at the Mughal court, see Walter J. Fischel, Jews and Judaism at the Court of the Moghul Emperors in Medieval India. *Proceedings of the American Academy for Jewish Research* 18 (1948–1949): 137–177.



number of references to the function of the *diwan-i khass* (the hall of private audience where the debates were conducted) and the assemblies held there as a royal court of justice for all the empire's subjects. A survey of the cases brought before the monarch shows that the *diwan-i khass*, just as the *mazalim* courts of the 'Abbasid and early Mamluk periods,<sup>36</sup> was mostly concerned with administrative and penal law: in the course of its sessions, Jahangir thus released a convicted heretic out of consideration for his father as well as a number of other prisoners,<sup>37</sup> ruled against a Brahmin who claimed that his stipend had not been paid for twelve years,<sup>38</sup> unmasked the author of a theft thanks to his skilled practice of physiognomy (*tafarrus* or *firasa*),<sup>39</sup> compensated a man for the usurpation of his *madad-i ma'ash* grant by a local *jagirdar* (holder of temporary fiscal rights over a specified territory),<sup>40</sup> reprimanded an amir whose abuses of power had been reported by the people of Panjab,<sup>41</sup> and cleared another imperial official of charges of corruption.<sup>42</sup> Interestingly, two other cases recorded by 'Abd al-Sattar seem further to indicate that the jurisdiction of the *diwan-i khass* also included, like that of the *siyasa* courts of the late Mamluk empire, areas such as property and contract laws that were normally within the purview of the sharia courts of the *qazis*.<sup>43</sup> The first one involved inheritance: upon the parricide of his gamekeeper Isma'il, Jahangir adjudicated – in contravention of escheat regulations applying to all Muslims of the empire – that Isma'il's money and goods (*naqd-u-jins*) should be transferred to his brother Kamal.<sup>44</sup> The second civil dispute is especially signif-

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**36** Literary meaning "abuses of power", the term *mazalim* (sing. *mazlima*) "came to denote the structure through which the temporal authorities took direct responsibility for dispensing justice" (Jørgen S. Nielsen, *Mazālim*. In *Encyclopaedia of Islam, Second Edition*, Charles E. Bosworth, Emeri van Donzel, Wolfhart P. Heinrichs, Charles Pellat (eds.), vol. 6, 933–935, Leiden: Brill, 1986, here 933).

**37** 'Abd al-Sattar 2006, 22–24, 265 and 268.

**38** 'Abd al-Sattar 2006, 95, and *infra* in this essay.

**39** 'Abd al-Sattar 2006, 104–105. On the admissibility of evidence based on *firasa* in the sharia courts of the *qazis*, see Baber Johansen, Signs as Evidence: The Doctrine of Ibn Taymiyya (1263–1328) and Ibn Qayyim al-Jawziyya (d. 1351) on Proof. *Islamic Law and Society* 9:2 (2002): 168–193, here 188–189.

**40** 'Abd al-Sattar 2006, 207–208.

**41** 'Abd al-Sattar 2006, 219–220.

**42** 'Abd al-Sattar 2006, 271–272.

**43** For stimulating reflections on these *siyasa* courts and on the Mamluk sultans' increasing intervention in the legal system during the fourteenth–sixteenth centuries, see Yossef Rapoport, Royal Justice and Religious Law: *Siyāsa*h and Shari'a under the Mamluks. *Mamlūk Studies Review* 16 (2012): 71–102.

**44** 'Abd al-Sattar 2006, 246–247.

icant because it relates to exchanges (*mu'amala*): the plaintiff complained that after he had concluded a transaction worth 40 000 rupees with an individual, that same person had torn to pieces the written document (*khatt*) recording the deal and, even though several people had witnessed the scene, none of them was willing to testify. Another remarkable point in this *majlis* is the method used by the monarch to judge the affair: following the plaintiff's suggestion, he ordered the accuser and the accused to be tried by fire ordeal. Seeing the stupefaction that his order had aroused among the participants in the session who equated ordeal with oppression, he hastened to explain his decision: having intuited that the plaintiff was a liar and knowing that he would be the first of the two men to be tried by ordeal, he had meant the burning of his hand to be his punishment rather than a test of his innocence.<sup>45</sup> In most of the instances mentioned above and whatever field of law they pertained to, Jahangir is unequivocally seen performing his judicial duties, pronouncing sentences over cases brought before him as a last resort by people dissatisfied with earlier judgements and using the *diwan-i khass* as a supreme court of appeal. In addition to acting as *qazi al-quzat* (judge of the judges) – a not altogether unconventional role for a Muslim monarch – and as the following pages will show, the ruler also appears in the course of his exchanges with Brahmins and ulema as a full-fledged legist possessing the highest degree of competence in jurisprudence.

Even though debates with Hindu interlocutors are only two in the *Majalis-i Jahangiri*, they interestingly all depict the monarch as a rightful interpreter of *dharma* who was perfectly entitled to act as an arbiter in the legal disputes brought before him. During the twenty-sixth night session, Jahangir thus stepped into a discussion between Rajputs who were trying to decide whether the antelope (*nil-gaw*) belonged to the species (*nau'*) of deer (*ahu*) or of bovid (*gaw*), in order to know whether the consumption of its meat was lawful (*halal*) or unlawful (*haram*). After having listened to the arguments of both parties whose attempt to recast a debate about *dharma* in Islamic terms is noteworthy, the monarch concluded this dispute as follows: "If the antelope belonged to the species of bovid, its female would, like the cow, wear horns on its head; but it does not have any [horns], just as the doe. It is therefore clear that the antelope belongs to the species of deer and not of bovid;" in other words, the deer was *halal* because the cow was not. On hearing such words of wisdom, 'Abd al-Sattar concluded, all the present showered praise on the emperor.<sup>46</sup>

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<sup>45</sup> 'Abd al-Sattar 2006, 254–255.

<sup>46</sup> 'Abd al-Sattar 2006, 64–65. According to the *Nemivijaya nirvana rasa* (1617) by Kṛpasagara (Marshall 1967, n°938), the Jain monk Nemisagara Upadhyaya also brought before Jahangir a

Taking place a few months later, the second discussion is all the more interesting because it illustrates the combined functions of the imperial *majlis* as a judicial assembly and as a forum for juridical disputes, but also because it is the only debate recorded by ‘Abd al-Sattar involving Hindu scholars. This particular disputation was actually triggered by the arrival in the *diwan-i khass* of a Brahmin from Gujarat who belonged to the retinue of the Rajput amir Ram Das Kachhwaha and who claimed to have been in the service of the Mughals for twelve years without, however, having received any remuneration in exchange. His coming to the court was therefore a last resort solution to which he was probably compelled by financial straits. Even though Jahangir quickly uncovered the falsity of his claim and therefore dismissed his petition, the emperor lingered as he remembered having met the man eighteen years before and details about his physical appearance (he had no beard) and sartorial preferences (he wore a dhoti and refused pyjamas)<sup>47</sup> sprang to his mind. At this point of the session, a Brahmin called Pathan Mishra<sup>48</sup> stepped into the conversation and said: “Brahmins from Gujarat reproach us for eating meat (*gusht*), and we say [back] to them: ‘You abstain from meat but you drink water out of *mashk*, [flasks] which are made of the skin of living beings (*jandar*).’” He added that the Gujarati Brahmins’ rejection of trousers derived from mere imitation (*mahz-i taqlid*) and had no rationality (*ma‘qulat nadarad*). Whatever the unidentified Gujarati Brahmin had to say in his defense is unfortunately not recorded in the *Majalis-i Jahangiri*, and the discussion thereafter switched to why the Hindus, although they worship the cow (*gaw-ra miparastand*), hold its remains (*nim-khwurda*) to be polluted (*palid*) and consider its mouth the most impure (*napak*) of all its organs. By way

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dispute concerning a book which had been severely criticized by two leaders of the Tapa Gaccha sect.

**47** The dhoti is a long, unstitched clothing which Hindu men traditionally wrapped around their waist, whereas pyjamas refer to a type of trousers that gained popularity during the Sultanate and Mughal periods. For further details on the representations associated with these different types of garments, see Emma Tarlo, *Clothing Matters: Dress and Identity in India*. Chicago: The University of Chicago Press, 1996, 28–29. I am grateful to Catherine Clémentin-Ojha for having pointed out the reference to me.

**48** Mentioned as PT(H)AN MSR in the *Majalis-i Jahangiri* and as THYAN MSR in Jahangir’s memoirs or *Jahangir Nama* (Nur al-Din Muhammad Jahangir, *Jahangir Nama. The Jahāngir Nāma. Memoirs of Jahāngir, Emperor of India*, translated by W. M. Thackston Washington, D. C. and New York: Freer Gallery of Art and Arthur M. Sackler Gallery, Smithsonian Institution & Oxford University Press, 1999, 104), the man is very probably identical to Pathan Mishra Jajipuri, one of the two Sanskrit pandits who assisted Nizam al-din Panipati in the Persian rendition of the *Yoga-vashista* which he presented to Jahangir (then still known as prince Salim) in 1597. I am grateful to Shankar Nair for having brought to my attention this possible identification.

of answer, Pathan Mishra narrated the following story. In ancient times, when the tyranny (*sitamkari*) of Bala-Vrtra<sup>49</sup> prevailed, the heads of the *devatas* (i. e. devas or deities) came to see Brahma and asked for his help to restore order to the world. Brahma advised them to get hold of the bones of a Brahmin ascetic named Dadhich (the well-known Dadhicha of the *Mahabharata*), from which they would be able to make arms and weapons of war and to destroy the demon (*diw*). The devas found Dadhich in a state of meditation and had a cow lick his back in order to bring him back to consciousness, the animal also serving to protect them from the blaze of the ascetic's splendor. At this point, Pathan Mishra interrupted his narration and emphasized that this was the reason the Brahmins gave to explain why the protection of the cow (*hifz-i gaw*) was mandatory (*wajib*) in their religion (*dar din-i ishan barhama*). When Dadhich woke up, Pathan Mishra continued, he agreed to give his bones to the devas but he added that he should first perform his ablutions in all the *tirthas* ("pilgrimage place") of the earth, which were at once presented to him by the deities. However, before abandoning his body to the devas, Dadhich cursed the cow and said to it: "May your mouth always remain impure (*napak*)."<sup>50</sup> And this is why, Pathan Mishra concluded, the Hindus do not consider the remains of the cow to be pure. But Jahangir was not satisfied with the latter's explanation and he instead suggested that the true reason behind such a belief was that the cow cleaned the filth of its nose with its tongue. The imperial argument brought the discussion to a close, and all the participants in the *majlis*, including Pathan Mishra, approvingly prostrated before the monarch.<sup>50</sup>

If, in this instance, Jahangir does not seem to have been particularly eager to settle the dispute between two competing Brahminical communities and the contrasting sartorial and dietary rules they adhered to, he did not miss the opportunity to discard the mythical explanation offered by Pathan Mishra and stressed instead the hygienic foundations underlying the Hindu ban on beef,<sup>51</sup> thereby

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49 I am grateful to Audrey Truschke for her help in identifying these two mythical figures. The story narrated by Pathan Mishra constitutes a late version of the legendary battle between Indra, king of the gods, and the demon brothers Vrtra and Bala, that originally appeared in the Vedas and was subsequently retold in a number of Sanskrit texts, including the *Mahabharata* and some Puranas.

50 'Abd al-Sattar 2006, 95–98. The sources of the section on the cow are difficult to ascertain: while the cow's intervention in Indra's making of the *vajra* out of the bones of Dadhicha appears to be mentioned in the *Agni Purana* (Harish Johari, *The Healing Power of Gemstones: In Tantra, Ayurveda, & Astrology*. Rochester (Vermont): Destiny Books, 1988, 8–9), the development on the impurity of the cow and of its mouth bears the unmistakable imprint of *dharmashastras*.

51 Interestingly, a similar hygienic argument was also used by Jahangir to explain the Shiite ban on eating fish without scales ('Abd al-Sattar 2006, 117–118).

making clear to all the present (especially the Brahmin pandits) his supreme expertise in matters of *dharma*. In the end, however, the emperor's intervention on this occasion, as well as in the other discussions concerning Hindu socio-religious norms,<sup>52</sup> was relatively benign and positive, his remarks generally aiming at explaining such rules on a rational and scientific basis and not at discrediting them. If the snapshots provided by the *Majalis-i Jahangiri* are any indication of a larger trend, it seems that, with regard to *dharma* at least, the emperor's arbitrations ultimately resulted in the legitimation of existing norms. An altogether different image emerges from the much more numerous jurisprudential debates pertaining to the sharia whose provisions the monarch considered either inadequate or contradictory. Despite the universal idiom in which the spiritual pretensions of the ruler were formulated and the presence, in the night sessions of the *diwan-i khass*, of representatives of Hinduism, Christianity and Judaism, there is little doubt that Jahangir's efforts to renovate the "world of religion" were primarily directed at Islam and at those ulema who, in his eyes, were trapped in the formalism of the sharia and satisfied with legal conformism (*taqlid*).<sup>53</sup>

It comes out particularly clearly from the ninety-sixth *majlis* during which the monarch bombarded with questions an anonymous *qazi*. The first imperial query was about the validity of a divorce (*talaq*) granted without notifying the spouse. The *qazi* replied that this was permitted and seized the opportunity to lecture Jahangir on the different types of divorce allowed by the sharia. Far from

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52 See also 'Abd al-Sattar 2006, 13–14 for Jahangir's defense of Hindu ritual ablutions during solar and lunar eclipses. On the other hand, the emperor's only mention in the text of Hinduism as a set of metaphysical beliefs is very derogatory (p. 72).

53 Whereas *taqlid* (lit. "imitation", citation or following of a qualified jurist) has long been considered by historians of Islamic law a symbol of the supposed rigidification and stagnation of sharia following the so-called "closing of the gate of *ijtihad*" during the tenth century, it has recently been the object of a thorough historiographical reevaluation emphasizing continuity (rather than opposition) between the once-imagined binaries of *taqlid* and *ijtihad* (for further details, see Ahmed Fekry Ibrahim, Rethinking the *Taqlid-Ijtihad* Dichotomy: A Conceptual-Historical Approach. *Journal of the American Oriental Society* 136:2 (2016): 285–303, especially 163–169). Such a favorable evaluation of *taqlid* is, however, conspicuously missing from Akbari and Jahangiri imperial sources: in this body of texts, the term is used pejoratively to denote, beyond its technical juridical sense, the idea of blind imitation *vis-à-vis* any kind of transmitted knowledge (*naql*) and is therefore construed as an antithesis of the notion of intellect ('*aql*) which the Mughals meant to embody and to promote. The manipulation of the term *taqlid* in official histories is further illustrated by its range of use, chroniclers regularly employing it to discredit the ulema who had voiced scepticism about (if not outright opposition to) the juridical-religious claims of the *padshah*: compare for instance Abu'l Fazl, *Akbar Nama*, translated by H. Beveridge, 3 vols., Calcutta: The Asiatic Society, 2000 (reprint), III: 390–400 with Bada'uni 1864–1869, II: 211–212 and 272.

being impressed by the *qazi*'s display of his knowledge of *fiqh*, the emperor ruled such a divorce invalid (which is actually standard in Hanafi law): if not informed of the separation, he said, the wife may unwittingly commit all kinds of "forbidden and illegal" (*manhi wa na-mashru'*) acts. In a bid to pacify the monarch, the *qazi* readily agreed with his judgement but was soon put on the spot with another question: what were the provisions of the Islamic law regarding an individual who had taken possession of someone's house by force? Was this person's prayer still valid (*durust*)? In answer, the *qazi* began by stating that there were several opinions on the subject according to the different schools of jurisprudence (*mazhab*) before exposing the one that he deemed the most correct (*asahh*): the prayer of such a person was still valid, he argued, but was considered defective (*naqis*) inasmuch as divine worship required purity of cloth, body, and place. In this case, Jahangir asked half-jokingly, what about the prayer of a monarch who had arbitrarily (*ba-zulm*) seized the house of somebody? Even though the *qazi* rejected outright the very idea that a just emperor (*padshah-i 'adil*) could thus misbehave, the monarch insisted and cornered the *'alim* by reminding him that the conquest of Khandesh by Akbar had been considered illegal by a number of amirs:<sup>54</sup> "emperors," he concluded, "always cause individual wrongs for the common good" (*padshahan da'im zarar-i khass bara-yi naf'-i 'amm kardand*). Overcome by the monarch's arguments, the *qazi* had no choice but to acknowledge the illegality of certain royal practices such as execution as a punishment for theft (instead of the amputation of hands dictated by the *hudud* injunctions found in the Qur'an) or the patronage of singing and music (*naghma wa saz*).<sup>55</sup> If, then, the Islamic law voiced by the ulema is here depicted as ultimately coming up against the ruler's *siyasa* and the reason of state, it is however the sharia's inner contradictions and irrational character that are most often the object of Jahangir's criticisms.

In late August 1611, the emperor for instance challenged the scholars present – Qazi Shukr,<sup>56</sup> Maulana Shukrallah Shirazi<sup>57</sup> and Maulana Taqiyya (Muham-

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<sup>54</sup> Situated in the northwest Deccan, Khandesh was ruled by the Muslim dynasty of the Faruqis from 1370 to 1601.

<sup>55</sup> 'Abd al-Sattar 2006, 236–238.

<sup>56</sup> Bada'uni 1986, II: 191 mentions a Qazi Shukr in charge of Mathura in the time of Akbar. Pending further information and research, it is however impossible to establish whether Bada'uni's and 'Abd al-Sattar's Qazi Shukr were one and the same.

<sup>57</sup> At the time of the composition of the *Majalis-i Jahangiri*, Shukrallah Shirazi was an Iranian newcomer to the Mughal court, even though he had previously enjoyed the patronage of the amir 'Abd al-Rahim Khan-i Khanan in Burhanpur. For further details on his life and career (he was later to become one of Shah Jahan's most influential prime ministers under the title of Afzal

mad Taqi al-Din) Shushtari<sup>58</sup> – to answer the following question: to which of her two husbands a remarried widow would be reunited on the day of Resurrection (*qiyamat*)? Considering that the Prophet’s wives (several of whom had been widows) would necessarily be at Muhammad’s sides on the Day of Judgment, Qazi Shukr argued in favour of the second husband. The monarch, however, immediately discarded his opinion on the grounds that it derived from mere devotion (*ta’abudi*) and instead enjoined him to produce a rational proof (*dalil-i ‘aqli*) in support of his interpretation. Shifting to a legal perspective, the ulema emphasized that since the widow was regarded as a possession (*tasarruf*) of her second husband at the time of her death, she would therefore join him in the hereafter. So what would happen in this case, countered the emperor, if the second husband came to die before her? In these conditions, the scholars replied, she would be reunited with her first spouse. The rest of the debate is unfortunately not recorded in the *Majalis-i Jahangiri*, but ‘Abd al-Sattar’s closing remarks leave little doubt as to the identity of its champion: “Each of the Hanafi and Shafi’i ulema said something [different] according to his knowledge and talent (*danish wa rasa’i*), but since himself [Jahangir] had fortunately sat on the throne of investigation (*masnad-i tahqiq*), none of them could lay claim to the chair of reason (*kursi-yi ma’qul*).”<sup>59</sup>

While there are plenty of other discussions staging the inability of Muslim jurists to tune up in order to provide a common answer to the monarch’s queries or to justify the provisions of the sharia on a rational basis, I would like to conclude the present foray into the *Majalis-i Jahangiri* with one last debate. The latter is especially significant because it indicates that imperial ambitions in matters of religious law went far beyond the sphere of *fiqh* and touched upon its scriptural sources, first among them the Qur’anic revelation. Carried on during two sessions in early November 1610,<sup>60</sup> the dispute was triggered by the recitation of the Qur’anic verse “To you your religion, and to us our religion” – a verse which made the monarch wonder why Islam otherwise prescribed the elimination of unbe-

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Khan), see ‘Abd al-Baqi Nahawandi, *Ma’asir-i Rahimi*, M. Hidayat Husain (ed.), 3 vols., Calcutta: The Asiatic Society of Bengal, 1910–1931, here III: 27–30. Shaikh Farid ibn Ma’ruf Bhakkari, *Zakhirat al-khawarin*, S. M. Haq (ed.), 3 vols., Karachi: Pakistan Historical Society, 1961–1974, here II: 255–256.

**58** Also a native of Iran, Taqiyya Shushtari entered Mughal service under Akbar. He translated several works of advice from Arabic into Persian, and his deep knowledge of history earned him the title of Muwarrikh Khan (“Lord Chronicler”). According to Nahawandi 1910–1931, III: 682, he held the office of *sadr al-sudur* in 1615, but this statement is not corroborated by any other source.

**59** ‘Abd al-Sattar 2006, 265–266.

**60** ‘Abd al-Sattar 2006, 121–126.



lievers (*kafirān*).<sup>61</sup> In response to Jahangir's interrogations, the *qazi* of the army (*qazi-yi 'askar*) remarked that this verse had been in use (*ma'mul*) only until the time when the order to kill the unbelievers (*hukm ba qatl-i kuffar*) was revealed, following which it was abrogated (*mansukh gasht*). By indirectly acknowledging the existence of contradictions within the Qur'an, the *qazi* had inadvertently opened a breach into which the emperor eagerly stepped. As a matter of fact, the discussion thereafter deviated from legal issues and revolved around the tricky question of the abrogation (*naskh*) of Qur'anic verses, Jahangir questioning the soundness of keeping within the scripture and of carrying on the recitation (*tilawa*) of those verses whose ruling (*hukm*) was no longer deemed binding for the *'umma* (community of believers). Even after he had been explained by Maulana Ruzbih Shirazi<sup>62</sup> the three modes of abrogation that the ulema had established since the eighth century to deal with apparent inconsistencies within and between the Qur'an and the Sunna and, beyond, to stabilize the Islamic law, the emperor stuck to his position.<sup>63</sup> In a bold move, he even suggested to expel from the Qur'an those verses whose ruling was no longer binding (*andakhtan-i an az qur'an*), thereby openly challenging the integrity of the sacred text. At this point, Shukrallah Shirazi stepped up in the discussion and sided with his colleague against the monarch, countering the latter's proposal with the theory of

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**61** Reference is here to the sixth verse of the sura 109 known as "The Unbelievers" (*al-Kafirun*): dating from the first Meccan period, the sura "is said to have been revealed in response to a proposal made by the Meccan polytheists to simultaneously or alternatively worship Allah and the idols" (Régis Blachère, *Le Coran. Traduction selon un essai de reclassement des sourates*, 3 vols. Paris: Maisonneuve & Larose, 1947–1950, II: 125). In this respect, sura 109 contrasts with later suras of the Medinan (post-Hegira) period, some of them advocating a more aggressive attitude *vis-à-vis* non-Muslims.

**62** Ruzbih Shirazi's career is very poorly documented. Apart from his interventions recorded in the *Majalis-i Jahangiri*, he is credited by a mid-seventeenth biographical dictionary with the composition of an astronomical work (*Kitab-i zij*) together with the better-known Mulla Muhammad of Thatta (Bhakkari 1961–1974, II: 373).

**63** The three modes of abrogation are the following: *naskh al-hukm duna l-tilawa* (abrogation of the ruling but not of the recitation); *naskh al-tilawa duna-l hukm* (abrogation of the recitation but not of the ruling); and *naskh al-hukm wa-l-tilawa* (abrogation of the ruling and of the recitation), this last category actually referring to missing verses in the written version of the Qur'an. On the theory of abrogation and its role in Muslim juristic theory and jurisprudence, see Andrew Rippin, Abrogation. In *Encyclopaedia of Islam, THREE*, Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas, Everett Rowson (eds.), Brill online, 2015, online available under [http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-3/abrogation-COM\\_0104](http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-3/abrogation-COM_0104) (15/06/2015), for a useful introduction and John Burton, *The sources of Islamic law. Islamic theories of abrogation*, Edinburgh: Edinburgh University Press, 1990, for an in-depth analysis.

the inimitability (*i'jaz*) of the Qur'an.<sup>64</sup> Jahangir, however, declared the argument invalid in the case of those verses whose very words (*lafz*) had been abrogated. Driven to the wall, the Maulana had no choice but to invoke "divine wisdom" (*hikmat-i ilahi*) in order to justify the keeping of those verses in the scripture. Resorting to devotion in the midst of a disputation with the Mughal was however, as already suggested above, a particularly clumsy move as Shukrallah was about to discover for himself. Addressing him, Jahangir ordered: "Say: 'I am unable to give a rational explanation and I stand guilty (*ma'qul namitawanam wa mulzam shudam*).'" Having confessed to his weakness, the Maulana lowered his head in submission, and the session ended with the amir Mirza 'Aziz Koka's intervention in favour of the ulema who were allowed more time to consult their books (*kitabha*). The discussion resumed the following night along very similar lines, the only new element introduced by the scholars being their equation of the recitation of the Qur'an with a meritorious act (*sawab*) – a line of reasoning that the monarch refuted by pointing out that, in this case, no verse should be abrogated as to recitation. Jahangir further supported his general argument by mentioning a verse whose recitation had, according to him, been abrogated. Ironically, it is precisely the reference to this verse that brought to a close the lengthy debate on abrogation. Ruzbih Shirazi having remarked that the aforementioned verse was actually not part of the Qur'an, the focus of the discussion thereafter shifted on the difference between the Qur'an (the words of God transmitted to Muhammad through the angel Gabriel) and the holy (*qudsi*) *hadis* (the words of God directly transmitted to Muhammad) – a topic on which the emperor does not seem to have been willing or able to impose his views. The debate thus ended in a relatively pacified atmosphere starkly contrasting with the (contained) violence that had presided over most of the monarch's exchanges with the ulema, especially with Shukrallah Shirazi.

## Conclusion

What conclusions may be drawn from the *Majalis-i Jahangiri* concerning the Mughals' approach to religious law and its inner diversity? 'Abd al-Sattar's table-talks first and foremost show how important the interactions between messianic

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<sup>64</sup> For an introduction to the doctrine of inimitability, see Gustav E. von Grunebaum, *I'djāz*. In *Encyclopaedia of Islam*, Second Edition, Bernard Lewis, Victor L. Ménage, Charles Pellat, Joseph Schacht (eds.), vol. 3, 1018–1020, Leiden: Brill, 1986.

and rationalist elements were in the formulation of the *padshah's* legal authority. On the one hand, the text unmistakably indicates that, for Jahangir, “presiding over the new post millennial order”<sup>65</sup> involved the implementation of Akbar’s messianic program through his own continued efforts to reform religious law and to go beyond existent normative frameworks – missions that were traditionally described as the hallmarks of the Mahdi: under his dispensation, ‘Abd al-Sattar writes unequivocally, “the ancient laws were destroyed and the foundations of justice renewed” (*zabitaha-yi kuhan-ra barham zada wa bina-yi ‘adalat jadid nihadand*).<sup>66</sup> On the other hand, the *Majalis-i Jahangiri* also make clear that the ruler’s and, beyond, man’s active intellect was thought of as the key instrument of renovation in the juridical-religious sphere (in much the same way as experimentation was used to test authoritative traditions concerning questions of natural philosophy). In other words: while Jahangir’s authority was deeply rooted in a sacred and mystic idiom, he simultaneously set out to promote reason as a new universal law and his own person as its chief apostle, in keeping with the contemporary development of rational sciences (*ma‘qulat*) and philosophy at work in both Muslim and Hindu intellectual circles.<sup>67</sup> From this perspective, it seems that the monarch took a step further than the Safavid shahs who, until the end of the first quarter of the seventeenth century, were satisfied with patronising the adherents of legal rationalism (*usulis*) at the expense of traditionalists (*akhbaris*).<sup>68</sup> In addition to his unswerving support to the “rationalist school” which was by then already well-established in the Mughal empire (notably thanks to the immigration of Iranian scholars trained in the Shirazi philosophical tradition), Jahangir not only did his utmost to be recognized as the leader of that intellec-

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<sup>65</sup> I am here borrowing from Ali Anooshahr’s apt phrase (Ali Anooshahr, Review of A. Azfar Moin, *The Millennial Sovereign: Sacred Kingship and Sainthood in Islam*. *The Medieval History Journal* 18:1 (2015): 183–191).

<sup>66</sup> ‘Abd al-Sattar 2006, 247.

<sup>67</sup> On the sixteenth-seventeenth-century reinvigoration of rational sciences in the Muslim world, see Rula J. Abisaab, *Converting Persia. Religion and Power in the Safavid Empire*, London, New York: I. B. Tauris, 2004; Ali Anooshahr, Shirazi scholars and the political culture of the sixteenth-century Indo-Persian world. *Indian Economic and Social History Review* 51:3 (2014): 331–352 and Khaled El-Rouayheb, The Myth of “The Triumph of Fanaticism” in the Seventeenth-Century Ottoman Empire. *Die Welt des Islams* 48 (2008): 196–221. On the contemporary development of a “new reason” within Hindu philosophy, see Jonardon Ganeri, *The Lost Age of Reason. Philosophy in Early Modern India 1450–1700*, Oxford: Oxford University Press, 2011.

<sup>68</sup> For a useful introduction to the Akhbari-Usuli dispute and further references on the topic, see Robert M. Gleave, Akhbāriyya and Uṣūliyya. In *Encyclopaedia of Islam, THREE*, Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas, Everett Rowson (eds.), Brill online, 2016, online available under [http://dx.doi.org/10.1163/1573-3912\\_ei3\\_COM\\_0029](http://dx.doi.org/10.1163/1573-3912_ei3_COM_0029) (16/09/2016).

tual movement but also overstepped the limits that usually constrained Sunni ulema: in the hands of the emperor-cum-*mujaddid* (renewer), reason became an instrument for the renovation and standardization of Islamic law as well as a means to rid the Qur'anic revelation of its contradictions. Needless to say, such reason-based criticism did not apply to the monarch's messianic claims.

Yet, there is no denying that Jahangir's ambitions in the legal domain never translated into any concrete policy of reform. In point of fact, no text comparable to the *A'in-i Akbari* or to the *Fatawa-i 'Alamgiri* – two works that purported to bring some measure of standardization into state legislation and sharia respectively – is known for his reign.<sup>69</sup> Besides, his reformist zeal with regard to sharia does not seem to have had much impact in practice, at least if we are to believe the few notarial and judicial archives that have so far received attention from historians. Among the many seventeenth-century cases of property rights, marriage and divorce brought before the *qazis* of Surat and Cambay that have been examined by Farhat Hasan, none bears the trace of Jahangir's propositions recorded in 'Abd al-Sattar's text even though, admittedly, none exactly matches the situations described in the *Majalis-i Jahangiri*. Noteworthy is also the fact that the emperor's religious-legal claims are nowhere mentioned in the writings of contemporary ulema and Sufis. Such a silence is particularly remarkable in the case of the Naqshbandi Shaikh Ahmad Sirhindi (d. 1624) who, like the monarch, considered himself to be the “renovator of the second millennium” (*mujaddid-i alfi sani*) and likewise ambitioned to rejuvenate sharia: unlike the Mughal, however, he advocated a return to the Prophetic example and the exclusion of Hindus from public life.

Even though it remained *lettre morte* in his time, Jahangir's idea to equip the empire with a stable and homogenized juridical framework was not lost on his descendants. Once stripped of its messianic garb and considered as yet another element of the ongoing Mughal centralization, it may be said to presage the legal systematization pursued by his grandson Aurangzeb. If the latter never claimed to be a *mujaddid*, the upper hand his imperial predecessors had struggled to gain over the ulema enabled him to convince a sizeable number of scholars – some of whom were long-time friends and partisans<sup>70</sup> – to produce under his close super-

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<sup>69</sup> In the matter of *zawabit*, mention should nevertheless be made of the twelve edicts Jahangir issued shortly after his accession to the throne in 1605 and of the *farman* he addressed more specifically to provincial governors in 1612 (Jahangir 1999, 26–27 and 127–128): both illustrate the monarch's activity as law-giver and his will to have imperial regulations circulated throughout the realm.

<sup>70</sup> Guenther 2003, 218. For further details on the authorial team of the *Fatawa-i 'Alamgiri*, see Khalfaoui 2008, 57–73.

vision what was to become the most comprehensive legal text of Hanafi *fiqh* of the time. Significantly, the compilation of the *Fatawa-i 'Alamgiri* was recorded in contemporary chronicles in terms strongly reminiscent of Jahangir's dissatisfaction with the confused state of Islamic law. Here is, for instance, how Musta'idd Khan explained the composition of the compendium in his *Ma'asir-i 'Alamgiri*:

All the aim of his [Aurangzeb's] exalted heart was devoted to making the general Muslim public act according to the legal decisions and precedents of the theological scholars (*ulamā*) of the Hanafi school; but seeing that these rulings as found in the existing law-books were confused (*lit.* mixed) on account of the diversity of opinion among the qāzis and muftis and the weakness (*i.e.*, little weight or authority) of the traditions, and the contradictory nature of the declarations of those ancient authorities [...], the heart of this Emperor, the asylum of the Faith, was set on this that a syndicate of celebrated theologians and well-known scholars of Hindustan should go through the long authoritative books on jurisprudence, which had been collected in the imperial library, extract the rulings of muftis, and compile one comprehensive book out of them all, so that all may find out the authoritative rulings (on their cases) with ease [...]. About two lakhs of rupees were spent in preparing this book, which was entitled the *Fatāwa-i-'Ālamgiri*, and which rendered the world independent of all other books of jurisprudence.<sup>71</sup>

As a matter of fact, the *Fatawa-i 'Alamgiri* quickly “gained a reputation as a crucial Hanafi authority in the larger Muslim community where it was (and still is) known as *Fatāwā al-Hindiyya*.”<sup>72</sup> In a sense, Aurangzeb may therefore be said to have carried out – at least to a certain extent – Akbar's project to transform the Mughal empire into the Islamic world's new *qutb* (or leading pole) through the promotion of the *padshah* as a figure able to transcend legal diversity.

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<sup>71</sup> Muhammad Saqi Musta'idd Khan, *Ma'asir-i 'Alamgiri. A History of the Emperor Aurangzib-'Ālamgiri (Reign 1658–1707 AD) of Sāqi Mus'tad Khan*, translated by J. N. Sarkar, Delhi: Oriental Reprint, 1986 (reprint), 316–317. For the original and longer version of the '*Alamgiri Nama* on which Musta'idd Khan principally relied for his account of the composition of the *Fatawa-i 'Alamgiri*, see Muhammad Kazim ibn Muhammad Amin, '*Alamgiri Nama*, M. K. Husain, 'Abd al-Hai (eds.), 2 vols. Osnabrück: Biblio Verlag, 1983 (reprint), here II: 1086–1087.

<sup>72</sup> Guenther 2003, 216.

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