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Mirrors and Masks of Sovereignty: Imperial Governance in the Mughal World of Legal Normativism, c. 1650s—1720s

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History

by

Naveen Kanalu Ramamurthy

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ABSTRACT OF THE DISSERTATION

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Doctor of Philosophy in History

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Professor Sanjay Subrahmanyam, Chair

In the seventeenth century, the Mughal Empire in South Asia witnessed a remarkable political experiment of imperial centralization taken to its apogee, similar to global early modern trends elsewhere such as French Absolutism or Habsburg rule. The dissertation examines the Great Timurid emperor, Aurangzeb ʿAlamgir's (r. 1658–1707) peripatetic statecraft and reconstructs how Hanafi legal canonization and juridical attitudes forged imperial governance and its everyday operations. While contemporary scholarship focuses on cosmopolitan mobility and exchange during the "first globalization" to the neglect of early modern state formations, this study turns our attention towards legal systems of land-based empires that remained resilient well into the eighteenth century. It illustrates how Mughal centralization was molded by layered interactions with local elites, gradations in property regimes, and flexible bureaucracies across the Indian subcontinent. It covers Rajasthan and Gujarat in the west to Kashmir in the north, large swathes

of the Indo-Gangetic plains to the east and central India to the Deccan in the empire's southern fringes.

I analyze the configuration of Mughal sovereignty around the Hanafi "law of the land," showing how the imperial canonization, *Al-fatawa al-ʿalamkiriyya* ("The Institutions of the World Conqueror") formed the pivot for reforming the empire's legal architecture. From a transregional perspective, the study articulates the Central Asian heritage of the Mughals and compares their shared legal affiliation with the Ottomans. Weaving an intellectual history around the effects of canonization, this study evaluates different registers in which Hanafi law proliferated. Starting from the compilation of the *fatawa* by a team of imperial jurists under Shaikh Nizam's supervision in 1660s, the dissertation moves to its everyday application across the empire. It demonstrates that a critical appraisal of the place of law in Mughal India must proceed from canon to practice, that is, the translation of the Muslim learned scholars' legal opinions into daily habits in society. It draws on an extensive corpus of hitherto unexamined materials ranging from jurisprudential treatises to volumes of correspondence and sundry documentary genres in Arabic, Persian, and several regional languages. This study shows that Mughal legal culture remained highly resilient during the empire's collapse and continued to provide templates for transitory post-Mughal polities and the British East India Company rule in the fragmented world of the eighteenth century.

This study intervenes in two longstanding controversies in South Asian historiography—first, the nature of precolonial land tenures and second, the mechanisms through which precolonial states shaped the political economy. I establish the absence of allodial property in agrarian tracts; instead, the Mughal State nominally owned all land like the Ottoman *miri* in West Asia and Northern Africa. Explaining the practice of leasing state lands to agrarian communities for a contractual rent, I unearth the Hanafi juridico-economic principles behind Mughal revenue

settlements. This reinterpretation opens new perspectives to provide reasons for India's agrarian crises generated by tectonic shifts towards freeholding under colonial rule.

Next, in a predominantly agrarian economy, the study reveals how unprecedented suburban expansion took place through imperial privileges given to elite military officers, who incentivized artisan migration from rural to peri-urban settlements. During this expansion, judicial courts became key sites for offering legal intermediation and adjudication for ensuring the claims of lower-rung subjects. I show how the Mughal system of legal brokerage molded the legal subjectivity of the empire's inhabitants belonging to diverse ethnic and caste communities. The diffusion of Hanafi law in the subcontinent's ecological landscape, at the intersection of regional dynamics and the imperial order, secured autonomy and entitlements to local communities overseen by middling officials. The dissertation thus uncovers multiple notions of liability as well as forms of financial intermediation and representation that proliferated among trading groups, rural chieftains, and soldiers. Centralized state management was set within a normative Hanafi understanding of political economy, which enabled macroeconomic interventions through monetary policy and public credit by the late seventeenth century.

This dissertation thus challenges the prevalent historiographical orthodoxy that reduces Aurangzeb ʿAlamgir's rule to an umbrella term called "Muslim orthodoxy." Based on contemporary reified notions of the *sharīʿa* and an instrumental view of the emperor's decisions, it is often argued that he radically altered Mughal public culture. Instead, I excavate two tendencies that demarcate the logic of Mughal relations to their subjects during his long reign. First, non-Muslim castes and communities—the "protected communities" of the Muslim State—were treated as autonomous in personal affairs while being legally equal in public life. This dichotomy, the study argues produced a legal normativism of a distinct treatment where "Hindus" were ironically

less controlled by the State than "Muslims" in their social life. Second, contractual procedures mirrored degrees of standardization across the empire with regular bureaucratic reforms responsive to ground-level realities. Through instructions from above and intelligence reports from below, the imperial court produced, accessed, and transmitted information to state agents; thereby it was never distant from local concerns. Questioning colonial and postcolonial narratives of custom, this dissertation demonstrates that written Hanafi juridical doctrine—whose living historical memory is an embodied vernacular knowledge to this day in "Indian" *mentalité*—shaped South Asia's public legal system well until the mid-nineteenth century when English Common law eclipsed it under British colonial rule.

Tracing the genealogy of Hanafi ideas in Mughal public culture, "Mirrors and Masks of Sovereignty" charts the contours of a new-style imperial governance perfected during the empire's middle phase (1630s–1720s)—a break from conventions of its earlier iterations under Akbar and Jahangir—that created one of the strongest dirigiste states in the early modern world. This dissertation rejects both king-centered paradigms that overemphasize the emperor, Aurangzeb ʿAlamgir's personality and notions of fluid precolonial legal pluralisms that fail to situate law in a functional mode of social regulation and economic control within Mughal society layered with hierarchical stratifications of entrenched inequities. Rather, by examining gradations of proprietary rights and how they functioned through the state legal infrastructure, it reinterprets Mughal sovereignty as a juridical and financial relation of the governing elite to the governed. Examining Aurangzeb ʿAlamgir's theological-legal authority as much as his strategic acumen geared towards a holistic appreciation of state affairs, the dissertation conceptualizes the institutional mechanisms that went into wielding the greatest concentration of public power the Indian subcontinent witnessed in its precolonial past. In conclusion, I argue that it is high time to move beyond

reductive caricatures of the emperor's image—modern inventions that have little to do with Mughal subjects' quotidian experiences. Instead, I propose an analytical framework for rethinking afresh the dynamic interplay between power, law, and political economy at the height of Mughal rule.

The dissertation of Naveen Kanalu Ramamurthy is approved.

Asad Q. Ahmed

Anthony Pagden

Peter J. Stacey

Sanjay Subrahmanyam, Committee Chair

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[History] forces the silent body to speak. It assumes a gap to exist between the silent opacity of the "reality" that it seeks to express and the place where it produces its own speech, protected by the distance established between itself and its object (*Gegen-stand*). The violence of the body reaches the written page only through absence, through the intermediary of documents that the historian has been able to see on the sands from which a presence has since been washed away, and through a murmur that lets us hear—but from afar—the unknown immensity that seduces and menaces our knowledge.

Michel de Certeau, *The Writing of History*

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Acknowledgements

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Note on transliteration and transcription

I have adopted a simplified transliteration scheme for Arabic and Persian based on the IJMES guide. I have not indicated diacritical marks or long vowels except the *ʿayn* and the *hamza* or the "glottal stop." While transliterating standalone Arabic terms, I follow the Arabic convention rather than the Persian one. For instance, I say *bayt al-mal* and not *bait al-mal*. However, for words commonly used in Mughal documents, I follow the Persian transliteration. I say *qazi* and not *qadi* except when the latter term appears in an Arabic citation. I make an exception for *fatwa*/*fatawa*, which are transliterated throughout in the Arabic transliteration.

For proper names and place names, I follow the common forms current today rather than transliterate them. I say, Aurangzeb and not Awrangzib; Lahore and not Lahaur. In vernacular languages and Persian, proper names appear with wide variation. I have transliterated them as such in citations but followed standard spellings in the main text. Hence, Samarama becomes Shyam Ram. Common South Asian terms are spelt as they are known widely. I say, *haveli* and not *havili* or *hawili*.

For Indic languages, I follow standard Sanskrit transliteration without diacritical marks. For example, both *ś* and *ṣ* are indicated as *s*. However, I have retained vernacular exceptions while transliterating citations in the Dhundhari dialect of Rajasthani. In Dhundhari, *ṣ* represents both *ṣ* and *kh* sounds. To indicate this distinction, I transliterate as *Shana* and not *Khana* for the Persian *Khan*.

All translations are mine unless otherwise indicated.

Calendrical systems

Common Era: I have converted all pre-1750 dates to the Old Style (O.S.) or the Julian calendar following the convention in Indian historiography. This convention, established by the *Indian Ephemeris*, is based on the legally binding *Calendar (New Style) Act 1750*. Common era dates are not indicated by CE.

The Islamic Lunar Calendar or *hijri*: Abbreviated as AH standing for *Anno Hegirae*. I have standardized variations in month names in standard Arabic transliteration. I say *ramadan* and not *ramzan*.

Julus: The imperial regnal year is reckoned from the accession to the throne. Aurangzeb ʿAlamgir's regnal year runs in the Islamic lunar calendar and not the Persian solar calendar common in Shah Jahan's reign. The regnal year begins on 1 *ramadan*, the nineth month of the *hijri* calendar. I have noted the imperial regnal year by *julus*.

Vikrama samvat: Abbreviated as VS, this luni-solar calendar attributed to the legendary King Vikramaditya begins from 52 BCE and is widely used in northern India. The lunar month is calculated in the *purnimanta* style, running from the Full Moon to the next. I have used standardized Sanskrit month names while documents make use of regional and idiomatic variants. For instance, I say *phalguna* and not *paguni*/*paguna*. I have denoted the fortnight (*paksa*) of the waxing moon (*sukla*) by *sudi* and that of the waning moon (*krsna*) by *badi* in accordance with the Kacchawaha practice. No documents are dated on the Full Moon and on the New Moon as they are considered inauspicious.

***Saka* Era**: Beginning from 79 CE, this lunisolar year is used extensively in southern India. Unlike the northern Indian *Vikrama samvat*, the *saka* month is calculated in the *amasanta* style, running from the New Moon to the next. I have indicated the year as *saka*.

Fasli: calendar used for agrarian purposes with northern India and the Deccan variants.

Indic Cyclical Calendar: A calendar of sixty years repeating cyclically. I have indicated the name of the year followed by the term *samvatsara*. For instance, *subhanu nama samvatsara*.

Nota bene: In documents that use two dating systems, I have included both. For example, the *hijri* and the *julus* year appear in the imperial privy council minutes. When Rajasthani documents indicate vernacular abbreviations and variants of the imperial and the Islamic lunar calendar, I have indicated them as such without standardization to highlight the diversity of dating denotation customs prevalent in Mughal societies.

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"Krishna Bharadwaj's 'Return to Classical Theory': An Attempt towards an Archaeological Reconstruction." *European Journal of the History of Economic Thought* 22, no. 5 (October 2015): 896–914.

"Le *Sāhasabhīmavijayam* ou *Gadāyuddham* de Ranna: une adaptation du *Mahābhārata* dans la littérature de l'ancien kannada." *Bulletin d'études indiennes* 28–29 (2010–2011): 63–84.

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Introduction

In the second millennium, Hanafi law was the preeminent public legal system in South Asia, perhaps rivalled only by English common law in the last two centuries. Yet such a statement today will be shocking to most South Asian historians since virtually no scholarship exists on Hanafi law. The dissertation addresses this strange paradox that persists in modern renderings of Indo-Islamic polities: narrating the history of the State *sans* law, that is, making them appear "law-less" when they were "lawful" in reality. The Mughal State (1526–1857), the largest precolonial imperial formation in South Asia as much as the largest and most diverse of all premodern Islamicate polities in the world has been imagined without its own legal system. Was the Mughal State a legal regime of public power? When asking such a question, historians cannot afford to give a generic ahistorical answer that it was founded on a normative adherence to the *shariʿa* or God's law. Rather, the question is what made for the lawfulness of the Mughal State in its historical circumstances and in the eyes of its subjects. This dissertation sets out to address the fundamental relation between Timurid sovereignty and Hanafi law in the second half of the seventeenth century.[1]

The present study analyzes the transformation of the Mughal legal structure and the exercise of sovereignty during the long half-century reign of the last of the Great Timurids, Abu al-Muzaffar Muhyi al-Din Muhammad Aurangzeb Bahadur ʿAlamgir Padishah Ghazi (r. 1658–

[1] On Islamic sovereignty, see Patricia Crone and Martin Hinds, *God's Caliph: Religious Authority in the First Centuries of Islam* (Cambridge: Cambridge University Press, 1986); Patricia Crone, *God's Rule: Government and Islam* (New York: Columbia University Press, 2004); Knut S. Vikør, *Between God and the Sultan: A History of Islamic Law* (London: Hurst, 2005); Aziz Al-Azmeh, *Muslim Kingship: Power and the Sacred in Muslim, Christian, and Pagan Societies*. London: I. B. Tauris, 2001. Also see Ann K. S. Lambton, *State and Government in Medieval Islam. An Introduction to the Study of Islamic Political Theory: The Jurists*. (London: Routledge, 1991); Ann K. S. Lambton, "Quis custodiet custodes? Some Reflections on the Persian Theory of Government," *Studia Islamica* 5 (1956): 125–48.

1707). Challenging existing models of centralization based on revenue extraction, we propose an alternative theory of Timurid centralization focused on management, decision-making, and information coordination that kept the Mughal Empire together. We also bring out Aurangzeb ʿAlamgir's mastery in meticulously running state affairs. Skill, acumen, and secrecy—the kind of ethos that sovereignty vouchsafes makes Aurangzeb ʿAlamgir one of the great masters of *siyasa* (governance) in Islamicate political history. Such a recognition has rarely been accorded in historical assessments due to modern concerns with polemical controversies on a few exceptional issues: occasional temple destruction and the imposition of the capitation fee (*jizya*) on select non-Muslim subjects with middle to high level earned incomes. These controversies are associated primarily with the instrumentalization of the Indo-Islamic past to achieve contemporary political ends. Leaving such presentist and anachronistic understanding behind, our dissertation elaborates on the legal design of the Mughal Empire and the bureaucratic life of a statesman his non-Muslim subjects called *Sri Patasahaji* in the Indic style of reverence.

Analyzing the model of "unitary dominion" professed in the theological concept of imamate or the postprophetic leadership, we illustrate Timurid public power as an inter-networked set of jurisdictions with nested hierarchies of officers that were imperially administered. We explain how the activities of the imperial elite were coordinated around the less-credited Timurid command structure. During Aurangzeb ʿAlamgir's reign, Timurid public power was marked by its greatest centralization taken to the apogee. Louis XIV's absolutism fades in comparison with the splendid prerogative powers the *Grand Mogol* enjoyed in his domains.[2] Rather than being an admittedly homogenous norm present since Akbar's reign (r. 1556–1605), this phenomenon of

[2] On French absolutism, see Arlette Jouanna, *Le pouvoir absolu : Naissance de l'imaginaire politique de la royauté* (Paris: Gallimard, 2013); Arlette Jouanna, *Le Prince absolu : Apogée et déclin de l'imaginaire monarchique* (Paris: Gallimard, 2014).

concentrating public power gradually evolved from the 1630s onwards. At the interstices of this jural culture, a complex set of military powers, negotiation of interests, and property holding in urban agglomerations cohabitated. The State is an institution of power, coercion, and violence that often accomplishes its objectives by the demonstration of force. The force of the law, however, is coercive on subjects through its promise to guarantee individual and collective claims. Yet, the law requires the authorizing and the enforcing agency of the state, and, at times, violence may be necessary to achieve the ends that justice may dictate. Our present study engages with the dialectical play between the magnificence of Timurid public power and the elegance of its laws.

In the 1660s, Aurangzeb ʿAlamgir commissioned the compilation of the first and only imperial canonization of Hanafi law, *Al-fatawa al-ʿalamkiriyya* or "The Institutions of the World Conqueror." Composed in Arabic between 1665 and 1672, this work supervised by Shaikh Nizam and prepared by several other learned scholars cost 200,000 rupees. Consulting the excellent collection of legal manuscripts housed at the Mughal imperial library, Shaikh Nizam and his colleagues compiled the longest Hanafi *fatawa* text of its day. The impetus for the imperial recanonization goes beyond Aurangzeb ʿAlamgir's religious piety. As in other parts of the Islamic world, we can trace a longer genealogy for the compilation of *fatawa* in northern India going back to the Delhi and the Jaunpur Sultanates.[3] Continuing in this tradition, the multi-authored Arabic compilation known popularly outside the subcontinent as the "Indian Institutions" (*Al-fatawa al-*

[3] Naveen Kanalu, "Reasoning the Procedures of Law-Making in Premodern India: Persian Idioms of Islamic Jurisprudence," *Manuscript Studies: A Journal of the Schoenberg Institute for Manuscript Studies* 4, no. 1 (2019): 93–111. On other periods and regions of Islamic history, see Benjamin Jokisch, *Islamic Imperial Law: Harun-al-Rashid's Codification Project* (Berlin: Walter de Gruyter, 2007); Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (New York: Cambridge University Press, 2013); Guy Burak, *The Second Formation of Islamic Law: The Hanafī School in the Early Modern Ottoman Empire* (New York: Cambridge University Press, 2015). Also see Ahmed Fekry Ibrahim, "The Codification Episteme in Islamic Juristic Discourse between Inertia and Change," *Islamic Law and Society* 22 (2015):156–220. On the relation between Ottoman legal authority, see Samy Ayoub, *Law, Empire, and the Sultan: Ottoman Imperial Authority and Late Ḥanafī Jurisprudence* (Oxford University Press, 2020).

hindiyya) was the most widely circulated Indian book before European orientalists began collecting manuscripts. Feyzullah Efendi (1639–1703), the Shaikh al-Islam of the Ottoman Empire owned a copy made in the 1690s.[4] The British orientalist and judge, William Jones (1746–1794) too acquired a manuscript copy that once belonged to ʿAbd al-Haqq, the Padishah's Superintendent of Attendance (*darugha-yi khidmat*) and Muhammad Akram, both sons of the Chief Judge, ʿAbd al-Wahhab (d. 1675).[5] An apt way to illustrate the importance of *Al-fatawa al-ʿalamkiriyya* in a nutshell is that the most extensive Hanafi legal compilation was also the most widely circulated Indian text in the seventeenth century. It was in Arabic and not in Sanskrit or Persian. Since the nineteenth century, this work has undergone several editions from Calcutta, Beirut, and Cairo.[6] An Urdu translation exists as well.[7] Yet it would be no exaggeration to say that in modern studies on the Mughal Empire, it is impossible to find even a single legal opinion analyzed and discussed at length to critically evaluate the nature of Timurid statecraft from a text that runs to nearly 2,500 pages in its printed version.[8]

This mosaic of replicating Hanafi juridical culture through chanceries, state agents, and courts across its realms meant that the Mughal Empire began mirroring itself and reproducing

[4] *Al-fatawa al-hindiyya*, MS 1074, Millet Yazma Eser Kütüpkhanesi, Istanbul.

[5] 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 (Leiden: Brill, 2020), 462–91.

[6] Throughout the dissertation, we use the following edition: Shaikh Nizam et al., *Al-fatawa al-hindiyya al-maʿrufa bi'l-fatawa al-ʿalamkiriyya fi madhhab al-imam al-aʿzam Abi Hanifa al-nuʿman*, ed. Abd al-Latif Hasan Abd al-Rahim, 6 vols. (Beirut: Dar al-kutub al-ʿilmiyya, 2000).

[7] Shaikh Nizam et al. *Fatawa-yi ʿalamgiri*, trans. Maulana Saiyid Amir 'Ali, 10 vols. (Lahore: Maktaba rahmaniyya, s.d.)

[8] For a few studies, see Alan N. Guenther, "Hanafi *Fiqh* in Mughal India: The *Fatāwá-i ʻĀlamgīrī*," in *India's Islamic Traditions, 711-1750*, ed. Richard M. Eaton (Oxford: Oxford University Press, 2003), 209–30; Mouez Khalfaoui, *L'islam indien : pluralité ou pluralisme : le cas d'al-fatāwā al-hindīyya* (Frankfurt am Main: Peter Lang, 2008).

similar legal institutions across the subcontinent. Bringing back Aurangzeb ʿAlamgir's *niyaba*—stewardship as much as agency in shaping the Mughal Empire, we read the daily activities of a mundane administration that unmask Mughal subjects' profound socialization to Hanafi law. The legal sphere of the Mughal State cannot be conflated with the political alone nor can Hanafi law be considered outside Timurid public power. We demonstrate that the legal system—reasoned and grounded in Hanafi law, was the overarching principle of the Mughal State. We argue that this law had meaning for the Mughals in three different dimensions. First, Hanafi law represents the learned scholars' juristic opinions that generated legal norms. Second, it is the Mughal State's legal fact, that is, the way legal norms were applied in specific circumstances to produce lawful proprietary claims, ownership, and adjudication. Third, for ordinary subjects, their social experience with Mughal institutions meant they were acculturated to ideas and concepts of Hanafi law without knowing their technical aspects. Occulting the place of law has meant that the legality of the Muslim State has been given short shrift in precolonial historiography. The Mughal State's own doctrine, its laws, and its lawmakers have been largely relegated in modern narratives.

All theories of state formation proposed so far for the precolonial period such as the galactic polity, segmentary state, or military fiscalism fail to account for legal brokerage as the cornerstone of Islamicate polities. The Timurids, no doubt, coopted warrior ethnic groups, professional-caste communities, learned scholars in judicial positions, and a wide range of lower-level service providers to staff and run the state institutions across the empire. Sustaining this cooptation model was the Hanafi legal system that supported graded contractual relations between these lateral-level bureaucracies and lower rung elites, *zamindar*s, and village communities. Military fiscalism worked through these social relations that were also financial considerations. Through the legal system, we explain Mughal State formation as a political arrangement built on offering incentives

to subjects. In turn, the formal acceptance of Timurid imperial governance was made possible by gaining their loyalty, assistance, and trust in managing the local realities. Therefore, a two-tier political economy coexisted. One pertained to the imperial revenue extraction while the other formed a mosaic of localized land relations. The Mughal State as the security apparatus provided assistance in fostering commercial interlinkages between regions. In the second half of the seventeenth century, an information economy centered around the state's coordination mechanisms at different jurisdictional levels allowed for the circulation of knowledge on ground-level realities.

The Mughal State, rightfully so, has occupied an indisputable preeminence in modern historiography on precolonial South Asia.[9] For generations of scholars, the Mughal State has been synonymous with fiscality and revenue extraction.[10] Certainly, it is impossible to imagine Timurid rule without the agrarian revenue whose collection was grounded on thoroughly exploiting the peasantry while leaving them with some form of a meagre subsistence. With little to no choice and much state coercion, they financed the maintenance of the Timurid conquest-driven enterprise of an expanding empire, which coopted elite warrior ethnicities from within and beyond the subcontinent. In the last few decades, with the turn towards cultural history, Timurid sovereignty

[9] See Sanjay Subrahmanyam, "The Mughal State—Structure or Process? Reflections on Recent Western Historiography," *Indian Economic and Social History Review* 29, no. 3 (1992): 291–321; Muzaffar Alam, "State Building under the Mughals: Religion, Culture and Politics," *Cahiers d'Asie centrale* 3/4 (1997): 106–28; Muzaffar Alam, "A Muslim State in a Non-Muslim Context," in *Mirror for the Muslim Prince: Islam and the Theory of Statecraft*, ed. Mehrdad Boroujerdi (Syracuse: Syracuse University Press, 2013), 160–89; M. Athar Ali, "The Mughal Polity—A Critique of Revisionist Approaches," *Modern Asian Studies* 27, no. 4 (1993): 699–710; Stephen P. Blake, "The Patrimonial-Bureaucratic Empire of the Mughals," *The Journal of Asian Studies* 39, no. 1 (1979): 77–94.

[10] On the fiscal system, see Irfan Habib, *The Agrarian System of Mughal India 1556–1707*, Second Revised Edition (New Delhi: Oxford University Press, 1999); Shireen Moosvi, *The Economy of the Mughal Empire c. 1595: A Statistical Study* (New Delhi: Oxford University Press, 2015); Shireen Moosvi, *People, Taxation, and Trade in Mughal India* (New Delhi: Oxford University Press, 2008); W. H. Moreland, *From Akbar to Aurangzeb: A Study in Indian Economic History* (London: MacMillan and Co., 1923); W. H. Moreland, *The Agrarian System of Moslem India: A Historical Essay with Appendices* (Cambridge: W. Heffer, 1929). For a critique of the salient features, see Muzaffar Alam and Sanjay Subrahmanyam, "L'État moghol et sa fiscalité (XVIe-XVIIIe siècles)," *Annales. Histoire, Sciences Sociales* 49, no. 1 (1994): 189–217. On a Maratha perspective, see Sumit Guha, "Rethinking the Economy of Mughal India: Lateral Perspectives," *Journal of the Economic and Social History of the Orient* 58 (2015): 532–75.

has been studied through other facets such as self-fashioning in courtly life, literary practices in Persian, Sanskrit, and the vernaculars as well as divergent religious and sectarian beliefs including millenarian messianism.[11] Yet, unlike in Ottoman or Mamluk historiography, the Mughal State's Hanafi legal architecture has nowhere found its rightful recognition in the eyes of Mughal historians. Engaging with the discourses of theology (*kalam*) and law (*fiqh*), we trace the forgotten genealogy of Timurid sovereignty (*imama*).

At the heart of the Mughal State is a less appreciated legal paradox. Upon the accession of each Padishah, the whole revenue distribution was resettled as per Hanafi contractual agreements. Through his lifetime, they were continuously renegotiated in the form of prebendalization, benefices, rent-free grants among others. Timurid public power believed in discontinuity and *régime* change under each *imam* (leader). Upon the death or the deposition of the reigning Padishah, his public power was dissolved; the victor in the battle of succession among the male descendants of the Timurid household reconstituted his public power afresh. The *nouveau régime* superseded all previous settlements and reorganized the entire military-administrative complex. This logic of discontinuity and dissolution makes for the Mughal State's true difference from European political models of the Christian commonwealth—the "Leviathan" and the "body politic."[12] The *imam*'s legal-theological power was postprophetic leadership of the Muslim

[11] On courtly culture, see Sanjay Subrahmanyam, *Courtly Encounters: Translating Courtliness and Violence in Early Modern Eurasia* (Cambridge, Massachusetts: Harvard University Press, 2012); Norbert Elias, *The Court Society* (Oxford: Basil Blackwell, 1983). For recent models proposed to understand Mughal rule, see Corinne Lefèvre, *Pouvoir impérial et élites dans l'Inde moghole de Jahāngīr (1605-1627)* (Paris: Les Indes savantes, 2018); Supriya Gandhi, *The Emperor Who Never Was: Dara Shukoh in Mughal India* (Cambridge, Massachusetts: Harvard University Press, 2020); Abhishek Kaicker, *The King and the People: Sovereignty and Popular Politics in Mughal Delhi* (New York: Oxford University Press, 2020); Audrey Truschke, *Culture of Encounters: Sanskrit at the Mughal Court* (New York: Columbia University Press, 2016); Azfar Moin, *The Millennial Sovereign: Sacred Kingship and Sainthood in Islam* (New York: Columbia University Press, 2012); Munis Faruqui, *The Princes of the Mughal Empire, 1504–1719* (Cambridge: Cambridge University Press, 2012).

[12] See Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton: Princeton University Press, 2016); Ernst H. Kantorowicz, "Mysteries of State: An Absolutist Concept and its Late Mediaeval

community and not the Christian monarch's representation of the body politic. In contemporary terms, Timurid public power was not a political model of representation of any class of subjects, not even the perpetuation of "Muslim interest." As Padishah, he was also the ruler of non-Muslims on their temporal matters; he did not exercise any religious authority on them. Like an ordinary Muslim individual, the *imam* entered into contractual obligations with his subjects.[13] Due to this difference, no bodily fusion of different communities (*aqvam*) kept together under an overarching imperial command was possible. The Timurids did not desire to forge a proto-national monolithic identity. Since Mughal subjects were not forced to become "one," widespread violence and persecution were impossible in the legal design of the Mughal Empire. Whatever Aurangzeb ʿAlamgir's personal prejudices may have been, he had never deployed the juggernaut state machinery under his firm grip to conduct religious massacres or to instigate "communal" rioting. Rather, state culpability in perpetuating "communal" violence is a well-documented phenomenon in contemporary South Asia.[14]

The question of the "law" in the precolonial past has been heightened by a colonial overdetermination. Jural modes of the premodern past, their historicity, and intellectual genealogy remain at the margins of contemporary preoccupations with the Mughals. The transformation in

Origins," *The Harvard Theological Review* 48, no. 1 (1955): 65–91; Michel Senellart, *Les arts de gouverner. Du* regimen *médiéval au concept de gouvernement* (Paris: Seuil, 1995); Louis Marin, *Le portrait du roi* (Paris: Les Éditions de Minuit, 1981). On a recent anthropological analysis of kingship, see David Graeber and Marshall Sahlins, *On Kings* (Chicago: Hau Books, 2017).

[13] See Norman Anderson and Noel J. Coulson, "The Moslem Ruler and Contractual Obligations," *New York University Law Review* 33, no. 7 (1958): 917–33; Noel J. Coulson, "The State and the Individual in Islamic Law," *The International and Comparative Law Quarterly* 6, no. 1 (1957): 49–60.

[14] The literature on contemporary "communalism" is large. For a diverse set of scholarly views, see Praful Bidwai, Harbans Mukhia, and Achin Vanaik, eds., *Religion, Religiosity and Communalism* (New Delhi: Manohar, 1996). On the colonial context, see Gyanendra Pandey, *The Construction of Communalism in Colonial North India* (New Delhi: Oxford University Press, 2006).

the civil and the criminal legal systems that colonial rule brought has been extensively analyzed.[15] The British jurist, Henry Sumner Maine (1822–88) pitched a distinction between societies of "contract" and "status" as a general theory of society. In the minute from July 17, 1879 on the "Indian Codification," Maine stood up in the Law Commission in the high noon of Empire and made a famous declaration while passing laws that are still in force in the subcontinent. Maine argued that India was "singularly empty of law" and "full of indigenous legal or customary rules" that desperately necessitated codification.[16] Ironically, less than half a century earlier, the Director of the East India Company, Archibald Galloway (1779–1850) had recognized that Hanafi law was necessary to understand northern India.[17]

The place of Islamic law in South Asian debates has crystallized around the dislocation of religion, law, and subjectivity that "colonial modernity" generated among Muslim communities.[18] Today, Islamic law is often reduced to personal matters such as marriage, divorce, and inheritance. Modern ways of perceiving the *shariʿa* as Muslim personal laws have often displaced the larger

[15] See Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (New Delhi: Oxford University Press, 1998); John Duncan Martin Derrett, "The Role of Roman Law and Continental Laws in India," *Zeitschrift für ausländisches und internationales Privatrecht* 24, no. 4 (1959): 657–85. Also see Michael R. Anderson, and Sumit Guha, eds., *Changing Concepts of Rights and Justice in South Asia* (Oxford: Oxford University Press, 1998).

[16] Henry Sumner Maine, *Minutes by Sir H. S. Maine 1862-69: with a note on Indian Codification, dated 17th July, 1879* (Calcutta: Office of the Superintendent of Government Printing, 1892), 232. Also see Henry Sumner Maine, *Ancient Law: Its Connection with the Early History of Society and its Relation to Modern Ideas*. With Introduction and Notes by Frederick Pollock (London: John Murray, 1920).

[17] See Archibald Galloway, *Observations on the Law and Constitution, and Present Government of India, on the Nature of Landed Tenures and Financial Resources, as recognized by the Moohummudan Law and Moghul Government, with an Inquiry into the Administration of Justice, Revenue, and Police, at present existing in Bengal* (London: Parsburg, Allen, & Co., 1832).

[18] See Julia Stephens, *Governing Islam: Law, Empire, and Secularism in Modern South Asia* (Cambridge: Cambridge University Press, 2018); Scott Alan Kugle, "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia," *Modern Asian Studies* 35 (2001): 257–313.

context in which Islamic law operated in premodern Muslim States.[19] The focus on contrasting views of "rupture" and "continuity" wrought by colonial rule has only clouded a distinct perception of the precolonial legal world. This tendency has been accentuated in South Asian historiography, which treats the region as a closed space artificially cut off from the larger Islamicate world and its intellectual culture.[20] Yet, the Mughal domains were at the crossroads of Central Asia and Iran. A shared heritage of Hanafi law had gone into the making of similarities between the two Hanafi-Gunpowder empires, the Ottomans and the Mughals as much as the Central Asian Khanates. Leaving the possibility of a comparative study between these two empires' adaptations of Hanafi law to divergent ethnic, environmental, and social realities for another occasion, we have indicated, where possible, the commonalities and differences between them.

The intellectual culture of northern Indian Hanafi law is deeply tied to Central Asia, Iran, and West Asia. The immense legal scholarship of Transoxanian Hanafi jurists like Sarakhsi's legal, contractual, and fiscal ideas or for that matter Mughal learned scholars like Jalal al-Din Thanesari, Shaikh Nizam, Mulla Jiwan Amethawi, Muhammad Aʿla Faruqi Thanawi, to name only a few, finds no presence in contemporary debates of any aspect of Mughal culture: religious, economic, fiscal, or political practices. That is, the craftsmen and the architects of the legality of the Muslim State in the subcontinent figure nowhere in South Asian intellectual history; they have at best been collectively relegated as "orthodox" representatives of Indo-Islamic culture. When compared to the extensive, and at times excessive attention paid to Brahminical *dharmasastra* texts, elite Hanafi

[19] See Rudolph Peters, "From Jurists' Law to Statute Law or What Happens When the Shariʿa is Codified," *Mediterranean Politics* 7, no. 3 (2002): 83–95; Aharon Layish, "The Transformation of the Sharīʿa from Jurists' Law to Statutory Law in the Contemporary Muslim World," *Die Welt des Islams* 44, no. 1 (2004): 85–113.

[20] On a critique, see Sanjay Subrahmanyam, "Beyond the Usual Suspects: On Intellectual Networks in the Early Modern World," *Global Intellectual History* 2, no. 1 (2017): 30–48.

fiqh has been accorded no space in how the Indian nation-state imagines its precolonial past. This contrast by itself is a striking phenomenon of how the subcontinent's elite Muslim legal culture in the second millennium has been given short shrift, that too, when discussing Islamicate polities! To put it another way, the "imagined community" has allowed for no reckoning of this reality that kept various actually existing communities living in the Mughal Empire together since the Islamic legal past serves none of its objectives.

The reason for the neglect of Hanafi legal history can be located in the modern tendencies to explain so-called Muslim-Hindu coexistence. Indo-Islamic culture has been hijacked by current political preoccupations with "secularism" as much as "communalism" in the Indian polity. The partisans of "communalism" read religious sectarianism writ large out of a few exceptional incidents such as temple desecration. The partisans of "secularism" steer away from the law due to anxieties of not wanting to depict the dominant way Islam has shaped the subcontinent's past. Both these explanations share a common trait: they deny the preeminent place that Hanafi law enjoyed as the public legal system guaranteeing the rights of non-Muslims as much as Muslims. Hanafi contractual law applied to land ownership and property relations. As we will see throughout our discussion, major misinterpretations have happened of even the mundane aspects of fiscality that Aurangzeb ʿAlamgir's imperial court made, let alone religious identity. This modern neglect arises from an "orientalist" assumption prevalent in Mughal historiography that the *shariʿa*, being "religious law," had no larger meaning for Timurid public power's legal design. While historians of Islamic law have long analyzed the doctrine of *fiqh*, they have had little effect on how historians of Islamicate empires approach the nature of statecraft, fiscality, and legal institutions. In the subcontinent, as we will argue, the salience of Hanafi law is further enhanced by its continued relevance well into the transition towards British colonialism in the early nineteenth century.

The noted legal historian, S. F. C. Milsom's description captures best why legal history is difficult as much as a slippery slope:

> At any one time the law represents a substantial part of the assumptions of society… legal history, more than most kinds of history, depends upon the assumptions with which the materials are read. People do not formulate their assumptions for themselves, let alone spell them out for the benefit of future historians, and in the case of the law there is never occasion to write down what everybody knows. *And when everybody has forgotten what everybody once knew, when the assumptions are beyond recall, there is nothing to put the historian on his guard*.[21]

If a legal historian of Common law—it is English as much as Indian now—that has been extensively studied, can caution us so, we can imagine the amount of scholarship that remains to be excavated on how Hanafi law worked in the Mughal world. Through an examination of several *fatawa* texts available in the form of unedited manuscripts as well as the imperial canonization, ours is a politico-legal return to the Mughal State. We avoid asking questions in terms of old-style political history that finds impetus in great events like wars and battles, heroic actions, religious ideologies, and bloody succession struggles.

The conceptual framework of the dissertation challenges the persistent dichotomy in Indo-Islamic historiography that is suspicious of Islamic law as rigid and orthodox while portraying Sufi mysticism as fluid, messianic, and heterodox. Irfan Habib glosses over the legal views as "the petty obscurities of the *Sharī'at*."[22] Muzaffar Alam notes that "Aurangzeb extended patronage to the

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[21] S. F. C. Milsom, *A Natural History of the Common Law* (New York: Columbia University Press 2003), 76–7. Emphasis added.

[22] Habib, *The Agrarian*, 354.

compilation of the *Fatāwā-i ʿĀlamgīrī*; but again *there is no evidence of this ever being put into practice*."[23] We will pay close attention to the logic, argumentation, and rationality of the legal disagreements (*ikhtilaf*) between the *ʿulamaʾ*, which were not "petty obscurities," but fundamental juridico-philosophical thought processes inherent to the principles of law-making. Equally, we will demonstrate the existence of extensive evidence for the legal opinions from *Al-fatawa al-ʿalamkiriyya* working remarkably well in the lives of many Mughal subjects, even those lower down the social hierarchies like palanquin-bearers, weavers, and traders. They took recourse to a law which they could not read and comment unlike the *ʿulamaʾ*. None of these ordinary folks would have even known of the imperial canonization's existence nor had the money, social status, and Arabic legal literacy to buy its exorbitantly expensive manuscripts in Delhi's bookshops and read them leisurely at home. Still, they were subjects of the Mughal State and hence subject to the State's legal system in ways certainly different from but very much similar to how we remain subject to the State's jurisdiction and the laws of the land where we live, irrespective of whether we are citizens or non-citizens, very often ignorant, as all of us are, of the legal codes, legislations, digests, and precedents that are in force. Legal knowledge is a niche of the jurists. Yet, Hanafi jurists have not received their rightful credit in Mughal historiography.

The polity imposes legal limits for conducting all types of transactions. Hence, there were wide ranging middling officials like *qanungo*s, literally, the expounders of the *qanun*, chancery employees, judges, police, scribes, military magistrates—the Mughal State was a gigantic bureaucratic enterprise and the largest employer, which had trained them in applying laws, making revenue agreements, and preparing contracts. We argue that the rationality inherent to the

[23] Muzaffar Alam, *The Languages of Political Islam in India, c. 1200–1800* (New Delhi: Permanent Black, 2004), 13. Emphasis added.

substantive law (*furuʿ al-fiqh*), its diversity of legal opinions, and their application cannot be sidelined since they represent values the Timurids cherished dearly as part of their religious piety. In our interpretation, we take a cue from Niklas Luhmann's idea that "religion can only (externally) be defined in the mode of a second-order observation, as an observation of its own self-observation—and not by the dictates of some external essence."[24] We analyze the ethical, religious, and mundane purposes for which Islam as "religion" (*din*) and "this world" (*dunya*) played a central role in Timurid statecraft. Therefore, we take an alternative route of what we consider a post-secular interpretation that gives due place to religious values, observations, and ethics as inseparable elements of even mundane matters such as fiscality, monetary policy, and judicial procedures since they were bound to each other in Timurid Weltanschauung.

We have chosen to call the processes of Mughal juridical settlement, "legal normativism." Historians often make a stark distinction between legal pluralism and legal universalism.[25] Legal pluralism implies the existence of multiple legal systems with none being dominant while legal universalism refers to a single legal system dominating all. In recent scholarship, legal pluralism has gained popularity since it allows for making claims to diversity of legal viewpoints that cannot be accommodated by legal universalism. Legal pluralism has become so ubiquitous in contemporary academic discourse of historians in the last decade that virtually every epoch and every legal system has been so labelled. Therefore, its utility as an analytic category remains uncertain beyond limited heuristic purposes. Unlike historians, jurists opt for a more nuanced

[24] Niklas Luhmann, *A Systems Theory of Religion*, trans. David A. Brenner with Adrian Hermann (Stanford: Stanford University Press, 2013), 23.

[25] See Lauren Benton and Richard J. Ross, eds., *Legal Pluralism and Empire, 1500–1850* (New York: New York University Press, 2013); Paul Dresch and Hannah Skoda, eds., *Legalism: Anthropology and History* (Oxford: Oxford University Press, 2012).

distinction between legal positivism, legal realism, and legal formalism based on the principles of legal belief and less what their outward appearance. Legal positivists observe the law as a closed logical system with its internal coherence that is not necessarily linked with morality. Legal realists argue that the law must be tested against the empirical facts where it becomes operative. Legal formalists consider law as a set of principles that can be applied to any facts of a case.

In legal history, matters are far more muddied. We consider Timurid public power's design legal normativism as it was meant to demarcate the public law for social interaction between different communities and individuals. Pronouncing on matters of non-Muslim private beliefs was not the state's concern. Legal normativism, therefore, captures best the idea that the Mughal public culture was uniform. The very fact that parts of Hanafi law were inoperative on non-Muslims gave them autonomy to conduct their religious, ritual, and kinship affairs without hindrance. Certainly, we do not mean occasional conflicts had not occurred, but that would be true for any society and state.

While the acculturation of the Timurids to the region has been well-known, less known is the socialization of the subcontinent's peoples to Hanafi law. On the one hand, we elaborate on how Hanafi law constituted their legal subjecthood. On the other hand, we unearth the agency and legal consciousness of ordinary individuals and communities living within a stratified political economy. For all legal procedures to be in order, the verification of individual identity to be possible, and the recognizance of various liabilities, claims, and dues to be settled, the modalities of Hanafi law were employed. Timurid public power was a relation with subjects who belonged to different communities (*jati* or *qaum*). As the noted legal philosopher H. L. A. Hart argued, law has

an ascriptive quality to it.[26] The law designates one's responsibilities as well as rights in intersubjective transactions. Throughout the present study, we will reiterate this ascriptive quality in the Mughal State's contractual obligations to various strata of subjects. Rather than artificially separate God's law (*shariʿa*), jurisprudence (*fiqh*), Mughal State law, and customary practices as separate spheres, our guiding thread disentangles their mutually imbricated nature in Mughal legal realities. Local customary practices, no doubt, existed; they were not codified as a coherent body of knowledge, that is, customary law.[27]

A complex information economy for managing the logistics of empire was firmly in place by the late seventeenth century. Christopher Bayly created an impression that intelligence gathering was a late-eighteenth-century phenomenon.[28] We revise this misconception, which ignores the postal infrastructure and information-sharing methods consolidated over more than a century of Mughal rule. On any day, a snapshot of this empire that we have to imagine on the subcontinental scale is one where papers kept circulating at different intervals through its arterial highways on horseback—charters, orders, patents, mandates, letters, petitions, rescripts, appointment, reinstatement and resignation letters, daily journal entries of every city and town, judicial court proceedings of each jurisdiction, balances in every treasury, news reports of every place, intelligence briefings, battle reports, inventories of all kinds, revenue ledger books, and

[26] H. L. A. Hart, "The Ascription of Responsibility and Rights," *Proceedings of the Aristotelian Society* 49 (1948-49): 171–94.

[27] I have analyzed the colonial construction of customary law and the codification of customs with the use of Persian neologisms elsewhere. See Naveen Kanalu, "La loi du droit non-écrit : La construction théorique-épistémologique de la coutume au XIXème siècle," *Noesis*, Special issue on Philosophy of Customary Law 34, no. 1 (2020): 193–215.

[28] Christopher A. Bayly, *Empire and Information: Intelligence Gathering and Social Communication in India, 1780-1870* (Cambridge: Cambridge University Press, 1996). Also see Michael H. Fisher, "The Office of Akhbār Nawīs: The Transition from Mughal to British Forms," *Modern Asian Studies* 27, no. 1 (1993): 45–82. Here, as elsewhere, seventeenth-century documentary culture remains poorly studied.

seals. Sovereignty was knowing what everyone was up to, at least wherever possible, in this vast empire. Information economy and time coordination, as we will demonstrate, sustained Timurid public power in the late seventeenth century.

Since distance itself was a concern, dealing with distance within an ever-expanding empire became a crucial strategic consideration by the 1700s. Distance produced varied solutions with a centralized model of statecraft and a highly decentralized local context. Intelligence and news reports were regularly shared with concerned jurisdictions while various verification processes were put in place to ascertain if state agents were behaving as they were expected to. The judges performed legal notarization for state documents and extracted testimony from parties to contracts, conflicts, battles, and tried keeping a check on the behavior of middling officials. We have analyzed how the geographical unevenness was dealt with from the imperial court, the nodal agency, through a command structure and information flows. For now, our focus has not been on how the state power exerted itself in an uneven fashion.

At different jurisdictions of the Mughal Empire, local variations of legal knowledge existed. In its mundane routine practices, Mughal bureaucracy was a mechanism of keeping track of ground-level realities. Lateral-level interactions between middling officials were unknown to the imperial center while information also flowed up the hierarchy. The imperial political economy of revenue extraction intersected with lower-order agrarian economies that varied from region to region. Hence, many Mughal legal practices were retained by post-Mughal regional kingdoms like the Marathas, the Sikhs, Kashmir as much as the East India Company's colonial regime in the eighteenth century.

The Peripatetic Padishah:

Military General, Administrator, and Magistrate of Law

Since the late nineteenth century, Aurangzeb ʿAlamgir's personality has been a subject of less debate and more polemical controversies. The noted historian, Jadunath Sarkar's (1870–1958) name and his five-volume *History of Aurangzib* loom large on modern assessments of the Timurid Padishah.[29] Historiographical questions have been overshadowed by the Padishah's so-called "religious orthodoxy" to the changes in the composition of the Mughal imperial military elite.[30] Privileging these well-known themes on "personality" and "elite households" invariably leads to ignoring the complexities Aurangzeb ʿAlamgir had to deal with while governing an ever-expanding empire. Institutional, logistical, military, and other contingencies, events, and unforeseeable difficulties came up to which he had to be responsive and responsible. He tried various calculations, adjustments, appeasements, pressurizing tactics, and agreements with the military elite whose support was necessary to run the Mughal State. Controlling the empire

[29] See Jadunath Sarkar, *History of Aurangzib: Mainly based on Persian Sources*. 5 vols (Bombay: Orient Longman, 1972–74); Jadunath Sarkar, *Anecdotes of Aurangzib and Historical Essays* (Calcutta: M. C. Sarkar, 1917). On an assessment of Sarkar's scholarship, see Dipesh Chakrabarty, *The Calling of History: Sir Jadunath Sarkar and his Empire of Truth* (Chicago: The University of Chicago Press, 2015). For other short biographies, see Sabah al-Din ʿAbd al-Rahman Shubli Nuʿmani, *Aurangzeb ʿAlamgir par ek nazar* (Delhi: Idara-yi adabiyat-i dilli, 1981); Audrey Truschke, *Aurangzeb: The Man and the Myth* (New Delhi: Penguin Random House, 2017). Also see Katherine Butler Brown, "Did Aurangzeb Ban Music? Questions for the Historiography of his Reign," *Modern Asian Studies* 41, no. 1 (2007): 77–120; Anne Murphy and Heidi Pauwels, "From Outside the Persianate Centre: Vernacular Views on ʿĀlamgīr' Introduction," *Journal of the Royal Asiatic Society* 28, no. 3 (2018): 409–14.

[30] See M. Athar Ali, *The Mughal Nobility under Aurangzeb* (New Delhi: Oxford University Press, 2001); Sajida S. Alvi, "The Historians of Awrangzeb: A Comparative Study of Three Primary Sources," in *Essays on Islamic Civilization Presented to Niyazi Berkes*, ed. Donald P. Little (Leiden: Brill, 1976), 57–73. Also see M. Athar Ali, *The Apparatus of Empire: Awards of Ranks, Offices and Titles to the Mughal Nobility, 1574-1658* (New Delhi: Oxford University Press, 1985). On the so-called "religious policy," see Satish Chandra. "Some Considerations on the Religious Policy of Aurangzeb during the Later Part of His Reign," *Proceedings of the Indian History Congress* 47 (1986): 369–81; Satish Chandra, "Jizya and the State in India during the Seventeenth Century," in *India's Islamic Traditions, 711-1750*, ed. Richard M. Eaton (Oxford: Oxford University Press, 2003), 133–49. For the broader discussion on temple desecration, see Richard M. Eaton, *Temple Desecration and Muslim States in Medieval India* (New Delhi: Hope India Publications, 2004).

cohesively through a bureaucracy, the nature of imperial governance and its regional coordination were firmly imprinted with his stamp as we will see throughout the dissertation.

In the early modern world, the Holy Roman Emperor, Charles V (r. 1519–58) and the Ottoman Emperor, Suleyman the Magnificent (r. 1520–66) exemplify commanders in chief directing conquests while running the administration from the field.[31] Aurangzeb ʿAlamgir too belongs to that league of early modern military statesmen. An authoritative biography remains wanting of an unparalleled 73-year military and political career that relentlessly took the Padishah crisscrossing across the Indian subcontinent. Though peripatetic in lifestyle, his daily routine reflected a single-minded obsession kept up by an incisive work regime and a workaholic multi-tasking.[32] As a military general, he kept an incessant chain of command with officers stationed across the Mughal realms. He supervised operations on several fronts while also conducting them himself. A distinguished military general, an able administrator, the highest magistrate of law, and a learned scholar himself, Aurangzeb ʿAlamgir wore many hats simultaneously. We leave the possibility of writing an exhaustive biography of the Padishah's life spent in absolute devotion to and unwavering dedication to empire building for another occasion.

[31] See Geoffrey Parker, *Emperor: A New Life of Charles V* (New Haven: Yale University Press, 2019); Denis Crouzet, *Les guerriers de Dieu : la violence au temps des troubles de religion, vers 1525-vers 1610*, 2 vols. (Seyssel: Champ Vallon, 1990). For a recent study on the Ottoman Sultan, see Kaya Şahin, *Empire and Power in the Reign of Süleyman: Narrating the Sixteenth-Century Ottoman World* (Cambridge: Cambridge University Press, 2013).

[32] For different collections of Aurangzeb ʿAlamgir's correspondence and sayings attributed to him, see *Ruka'at-i-Alamgiri or, Letters of Aurungzebe (with historical and explanatory notes)*, ed. Jamshid H. Bilimoria (London: Luzac and Co., 1908); *Ahkam-i-alamgiri (Anecdotes of Aurangzib): Persian Text, with an English translation*, ed. Jadunath Sarkar (Calcutta: M.C. Sarkar & Sons, 1912); ʿInayat Allah, *Kalimat-i taiyibat*, ed. S. M. Azizuddin Khan (Delhi: Idarah-i adabiyat-i dilli, 1982); *Adab-i ʿalamgiri*, ed. ed. Abdul Ghafur Chaudhari, 2 vols (Lahore: Idara-yi tahqiqat-i Pakistan, 1971); *Raqaim-i karaʾim: Epistles of Aurangzeb*, ed. Syed Muhammad Azizuddin Khan (Delhi: Idara-yi adabiyat-i dilli, 1990); Vincent John Adams Flynn, "An English Translation of the *Ādāb-i-'ālamgīrī*. The Period before the War of Succession being the Letters of Prince Muhammad Aurangzīb Bahādur to Muhammad Shihābu'd-dīn Shāh Jahān Sāhib-i-Qirān-i-Sānī, Emperor of Hindustan," PhD diss., (Australian National University, 1974).

This transformation in Timurid statecraft had been in the making since Shah Jahan's early years (r. 1628–58). Unlike Jahangir's reign (r. 1605–27) when large parts of the regional administration had been left to high military officers, Shah Jahan, a keen bureaucrat, set in motion a phase of taking over the reins of the empire directly. A meticulously crafted information economy was in place by the 1650s with an expansive postal network collecting daily dispatches twice a day: early morning and early afternoon from across the empire. Aurangzeb ʿAlamgir combined Shah Jahan's bureaucratic traits while dictating imperial governance from the battle fronts. A flurry of correspondence followed military officers at an alarming pace behind their backs even when they were as far as Afghanistan in the 1680s. The Mughal bureaucratic culture of the late seventeenth century translates into one of the most complex jigsaw puzzles of the South Asian past that has barely been excavated to this day. Leaving its full assemblage for another occasion, the dissertation illustrates its major features in episodes of discrete decision-making.

Such administrative overhaul had changed the Mughal Empire's outlook from how it might have appeared even to the 16-year-old inexperienced prince in 1635 when he was sent to Chanderi for his first conquest under nominal command. Prince Aurangzeb honed his military skills through trial and error for twenty-three years as viceroy, especially, in the southern frontier. One could argue that he was actively cultivating his own "shadow domains" at the edges of empire. He took a hands-on approach while warring against and negotiating with the Bijapur and the Golkonda Sultanates. He was deeply engaged in the urban affairs and the public infrastructure improvements of Burhanpur, Daulatabad, and Aurangabad. He was the only Timurid prince to have a city, Aurangabad, named after himself. The prince was appointing judges in the Deccan towns through power of attorney granted by the imperial court. A trusted set of officer corps he recruited during the Deccan viceroyalty would back him in the cherished quest to seize power and to take over the

Mughal State, that is, a *coup d'état* at which he brilliantly outmaneuvered his opponents and came out successful.

Indeed, the Battle of Succession of 1658–59 between the four princes, Dara Shukoh, Shah Shujaʿ, Aurangzeb, and Murad Bakhsh, when scrutinized from the side of Aurangzeb's tactics, was a daring attempt at a "counter-conquest" of Hindustan from the Deccan. Many pretendents to sovereignty in Islamic political culture, including his brothers, Murad and Shujaʿ had made their claims loud and clear by enthronement, reading the sermon (*khutba*), and striking coins (*sikka*), which failed to come to fruition. However, Prince Aurangzeb's ambition began with building the practicalities of statecraft as the conquest kept unfolding. Before leaving Aurangabad, he made his son, Prince Muʿazzam and Wazir Khan the viceroys of the Deccan and Khandesh respectively. A viceroy nominating viceroys is none other than a pretendent Padishah. Assembling a military convoy stealthily and appointing state officers with nominal ranks, the prince's logistical planning and secret dealings were underway for months. Through the assistance of Central Indian *zamindar*s and their local informants who blocked communication lines and waterways, he hid coordinated military movements from imperial authorities while crossing the Narmada to enter Hindustan. Prince Aurangzeb had marched 450 kms deep into the heartlands when the imperial troops under Jaswant Singh's command were taken off guard by his presence and military preparedness barely a few days before the decisive Battle of Dharmat on April 15, 1658.

The paraphernalia of proclaiming sovereignty came almost at the end, once large territories had been secured and threats neutralized, Shah Jahan put under house arrest, the strength of his brothers sapped, the administration brought to its knees, and the loyalties of elite military officers procured. More than a year later, on June 5, 1659, Aurangzeb ʿAlamgir's grand enthronement on the Peacock Throne was celebrated at Delhi's Red Fort. The sermon was read from the pulpit and

gold coins were struck in his name now that he had proven his abilities beyond all doubts to actualize symbolic gestures of sovereignty. On that day, friends, courtiers, and witnesses would have barely foreseen how fortunate they were; their prayers and wishes for a long reign would come true beyond wild expectations. "The morning of felicity (*subh-i daulat*) [that] dawned on the night of Hind and the sunshine [that] entered every home"[33] radiated brightly for 17,747 days until dusk fell on February 20, 1707, with the Perfect Sovereign's (*Khidev-i kamil*) demise aged 89 years. Three generations of Timurid princes were waiting in the wings for this conjuncture. The next day, on the stage of Hindustan, another act in this drama unfolded in full view: daggers and swords were unsheathed, artillery and armies mobilized, and treasuries confiscated as a heroic succession struggle began for reconstituting the dissolved Timurid public power. Mughal subjects stared at the unknown void of an impending macabre violence. But they could not have imagined in 1707 that compared to the serene political stability the seventeenth century had offered, the eighteenth century would open an unparalleled grotesque chapter of grim bloodshed in their lives with the ghoulish dismemberment of the Mughal State by powers foreign to Hindustan: successive Iranian and Afghan military occupations, periodic Maratha raids and intrusions—the notorious *bargi* in Bengali peasant memory, who were responsible for the horror of 400,000 deaths in 1740s Bengal alone not to speak of Central India, and the beginnings of colonization by an overseas trading company. Who had been more violent? Not Aurangzeb ʿAlamgir; he had conducted annual military campaigns of imperial expansion and not wanton acts of raiding and vandalism of civilian properties. So much for Indian history's indictment of the "orthodox Muslim" ruler as being bigot, ruthless, and violent in character. In contrast, "orthodox Hindu" rulers are given a clean chit despite

[33] Muhammad Amin, *The Álamgír Námah by Muhammad Kazim Ibn-I Muhammad Amin Munshi*, eds. Mawlawis Khadim Hussain and Abd al Hai (Calcutta: The College Press, 1868), 362.

killing "many merchants, weavers, silk dealers, and other useful inhabitants" leading to "the industrial decline of entire regions."[34] They are even celebrated with monumental statues and *lieux de mémoire* today as national heroes in need of adulation.[35]

Peripatetic statecraft and conquest remained Aurangzeb ʿAlamgir's lifelong passion. Mostly camping in sprawling tents in the wilderness or on the highways, and, at times, relaxing in hunting lodges, he directed military campaigns, strategized security priorities, and guided administrative affairs. In the nomadic Padishah's personal belief, he was still at the "center" of his empire. He was at ease in the camp rather than in the court. A free-spirited person with a passion for hunting and trekking—he had been astonished to see the Ellora cave ruins outside Aurangabad—preferred the sprawling nature to the stifling culture of the courtly entourage. Elaborate Mughal court etiquette made for a suffocating environment; stiff-lipped courtiers, older eunuchs, and the harem with their internal intrigues and rivalries left much to be desired. Even while living in Delhi in the early decades of his reign, the Padishah regularly escaped to the nearby hunting grounds or stayed put for extended periods in the woods farther away. Never known for being firmly in one place, he preferred a small loyal friend circle free of courtly encumberments while no stone was left unturned as far as the luxuries of Timurid high society were concerned. A counterpart to military prowess was an unconditional dedication to keeping himself up to date with intelligence reports, transacting volumes of correspondence, and sending advisory and admonitory notes. In old age, tracking the actions of subordinates turned to the verge of paranoia.

[34] K. N. Chaudhuri, *The Trading World of Asia and the English East India Company, 1660–1760* (Cambridge: Cambridge University Press, 1978), 253.

[35] For a recent incisive appraisal of this phenomenon, see Corinne Lefèvre, "Heritage Politics and Policies in Hindu Rashtra," *South Asia Multidisciplinary Academic Journal* 24-25 (2020), accessed on April 3, 2021. http://journals.openedition.org/samaj/6728.

Our dissertation revises a dominant historiographical misperception Jadunath Sarkar created by arbitrarily dividing Aurangzeb ʿAlamgir's reign into two halves, the northern Indian (1659–81) and the southern Indian (1681–1707) phases. Our interpretation questions this assumption by showing how Aurangzeb ʿAlamgir was able to run the empire for twenty-six years from the Deccan's highways. To do that, first, we unmask the nature of the imperial court as a nodal agency for information and time coordination among the imperial elite. Second, through strategically positioned functionaries like Shayista Khan in Agra or Bengal and ʿAqil Khan Razi in Delhi (for sixteen years since 1681 when the Padishah left the city for good), northern Indian concerns were always on his mind. Third, he managed the spread-out state resources and treasury balances for conducting regional operations. Fourth, the grandees of the imperial court stationed in southern India still retained benefices and interests in the north that their representatives, agents, and intermediaries ran. Occasionally, their allies, like the Kacchawaha Rajputs, supervised matters through their agents in adjacent benefices. This complex imperial design of prebendalization was regularly revised. Fifth, northern India's public infrastructure repairs and maintenance were not neglected. The central axis of the information economy ran along the north-south artery connecting Delhi to Aurangabad. Given the larger constraints of writing a dissertation, we have kept aside successes, failures, and responses to contingencies arising from this form of heightened centralization of public power for another study.

Aurangzeb ʿAlamgir's legal-theological authority ties up with a less understood phenomenon of Timurid intellectual culture going back to Timur (r. 1370–1405) and Shah Rukh (r. 1405–47) beyond Turko-Mongol customs (*yasa* or *tura*).[36] The politico-theological concept of

[36] See Maria E. Subtelny, *Timurids in Transition: Turko-Persian Politics and Acculturation in Medieval Iran*. Leiden: Brill, 2007, 24–28; David Ayalon, "The Great *Yāsa* of Chingiz Khān: A Reexamination (Part C2). Al-Maqrīzī's Passage on the *Yāsa* under the Mamluks," *Studia Islamica* 38 (1973): 107–56; A. N. Poliak, "The Influence of Chingiz-Khān's Yāsa upon the General Organization of the Mamlūk State," *Bulletin of the School of Oriental and African*

imamate or the postprophetic leadership of the Muslim community occupied a premier place in Hanafi law and Ashʿari-Maturidi theology (*kalam*). An intellectual history of the ʿAlamgiri court culture has to be left for another time. However, we bring out facets of the *imam* who cultivated a deep knowledge of Islamic rational and transmitted sciences. The Padishah's acute interest in expanding the judicial settlement meant that the appointment of judges, even in small towns, had been rendered complete by the late seventeenth century. Throughout this dissertation, we take recourse to Hanafi *fatawa* works and ordinary documents to explain what it was that the Timurids, their state agents, judges, and other subordinates were intending when they began mundane bureaucratic workdays just after dawn.

The Padishah was no different—splendorous courtly assemblies of ascending the Peacock Throne were few and far between, even for him. To be precise, he sat on the Peacock Throne only twice every lunar year: on his birthday and on the anniversary of his accession to power, and that too if he happened to be in Delhi in between a busy schedule. For most of the year, the Peacock Throne was covered and kept in safe custody to prevent anyone claiming it or managing to sit on it. On every day, he woke up before dawn. After performing his ablutions and the dawn prayer (*fajr*), he was given a bath at the toiletry chamber (*ghusalkhana*). While camping outside or marching, he often skipped taking bath everyday perhaps due to the inconvenience involved. Sometimes he observed the household troops' morning march covertly from the mosque's window. Very often he inspected horses and elephants at the imperial stables. Then, he read the day's intelligence reports ruminating perhaps of what to make of this empire that kept changing

Studies, 10, No. 4 (1942), 862–876; Ken'ichi Isogai, "*Yasa* and *Shariʿa* in Early Sixteenth Century Central Asia," *Cahiers d'Asie centrale* 3/4, 1997, 91–103. Denise Aigle, "Le grand *jasaq* de Gengis-Khan, l'empire, la culture mongole et la *sharīʿa*," *Journal of the Economic and Social History of the Orient* 47, no. 1 (2004): 31–79. Also see Beatrice Forbes Manz, *The Rise and Rule of Tamerlane* (Cambridge: Cambridge University Press, 1989); Stephen F. Dale, *The Garden of the Eight Paradises: Bābur and the Culture of Empire in Central Asia, Afghanistan and India (1483-1530)* (Leiden: Brill, 2004).

day after day—rebellions, skirmishes, battles, logistics, military deployment, revenue accounts, crimes, dacoities, and misdemeanor—there was no end to the frustrations of being Padishah of the part of the world we call South Asia these days. Later, early in the morning, he met in the privy council (*anjuman-i khass-i ghusalkhana*) to decide on pending administrative matters on which his consent was needed.

On any day, Aurangzeb ʿAlamgir's thoughts were occupied by the Mughal State's secular functions and less about his or anybody else's religion, contrasted with the amount of ink spilt in modern studies that have attempted to decipher his alleged "religious orthodoxy." The Mughal State was above all grueling work; life was too ordinary and strenuous despite the occasional extravagance a few miniatures portray. Mughal miniatures are artefacts that conveniently hide the historical reality of the imperial court's mundane bureaucracy and its planning for annual military conquests, gunpowder stocks, budgetary estimates, and balancing of accounts. His expectations from state agents were too high, and their behavior was always wanting because they often had their own intentions. It was not uncommon for them to behave in an unruly fashion towards helpless subjects. Reining those intentions and finding a way of disciplining them across such vast realms had been the lifelong purpose to which Timurid sovereignty bound him.

A less emphasized aspect remains that Aurangzeb ʿAlamgir was a military commander in chief by Timurid lineage, regimented childhood upbringing, hands-on training at the battlefield, and personal authority for whom punctilious discipline came naturally. Peasants, rebels, middling officials, and even judges and high military officers were punished, and, at times, capital punishment imposed if those crimes were tantamount to high treason or rebellion against the State. Sometimes, to preempt possible threats, *qalmaq* slaves conducted "extra-judicial" killings by strangulating opponents with a silk cord in the Turko-Mongol style. This was done to circumvent

actions that could constitute murder in legal terms. While we bring out, at times, the ideas of surveillance, discipline, and patrolling that went into Timurid public power's repressive tactics to prevent untoward violence (including possible communal conflicts), a full-fledged study of the state's well-worked out legal and policing techniques for maintaining order (*intizam*) in the cities and military checkpoints and intelligence sweeps for facilitating highway traffic must be kept aside for another occasion.

Timurid statecraft had to deal with daily realities of regulating individual and collective behavior in public spaces that were its own problems of running an unwieldy empire. Timurid *Realpolitik* needs our attention even if it does not appeal to our liberal or otherwise moral sentiments or provide precolonial templates satisfying the terms and conditions of "Indian Secularism." However, understanding this Indian past through historical reason is a necessary antidote against the colonial and the ongoing postcolonial instrumentalization of Aurangzeb ʿAlamgir's name with greater intensity. The nation-state's agenda of achieving these political ends has very little to do with him and much more to do with its partisans' "communal" intentions directed towards "othering" citizens who happen to share the same religion as him.

Modern historians have unfortunately found Aurangzeb ʿAlamgir to be uncolorful compared to his predecessors. Why isn't the pure pursuit of public power a multichromatic exercise? Sovereignty is theatre: he performed with many masks around a court and a world that were far from dull. Instead, they were full of intrigues. John Richards argues, "Less-formal socializing between nobles and emperor associated with [wine-drinking and opium consumption] no longer occurred…it did inhibit relations between the emperor and his senior officers. Considering the vital importance of the emperor-noble link in the Mughal system, this was a

serious weakness."[37] There is no causal relation between the quality of Timurid imperial governance and wine and opium consumption *per se*. If there is, one may argue that it is inversely related. Such views of "weakness" are ironical when the empire kept expanding, the Padishah ruled for half a century, and was daily active until the day he died. Indeed, as we will see, the senior officers, Bahrmand Khan, Ruh Allah Khan, and Mirza Yarʿ Ali Beg, meticulously managed the administration from the Deccan; the universal Indian addiction to betel chewing (*tanbul*) was sufficient for their socialization. Timurid rule was a network of officers working and defending territories while stationed across the empire, whose trust the Padishah never lost. This was not Louis XIV's Court and the French nobility living at Versailles. In Aurangzeb ʿAlamgir's old age, most of his officers were very young able men—the relationship was no more one of equals of similar age but an intergenerational one. In 1699, Jai Singh II ascended the Kacchawaha throne aged 11 years. The 81-year-old *Sri Patasahaji* would have inspired great deference in the young adolescent's mind; his great-great grandfather, Jai Singh I had been Aurangzeb ʿAlamgir's first Kacchawaha lieutenant. The 11-year-old boy would have hardly imagined drinking opium-laden wine, let alone with the patriarch from his great-great grandfather's generation, as he was underage even by Mughal standards. Therefore, what has interested us in this dissertation is not the "oriental" splendor the Timurids continue to evoke but the sheer stamina needed to withstand the mental and physical exhaustion that the desire for sovereignty brought with it. Analyzing the teetotaler Padishah's actual work, the dissertation examines the way Timurid public power operated within the geographical space of the subcontinent and not as a symbolic courtly setting of pleasures.

[37] John F. Richards, *The Mughal Empire* (Cambridge: Cambridge University Press, 1993), 173.

Many saw Timurid sovereignty's performance onstage. In the background, the wings, and the prompt, and sometimes, when the curtains were drawn, even on the forestage when the imperial court and its chanceries kept pace with their official duties, Hanafi law silently did its work stamping legality onto this public power's actions. The genealogy of Hanafi intellectual history, as we will show throughout this dissertation, takes us to many parts of the Islamicate world beyond the subcontinent. That culture wholly belongs to the Indian past without being exclusively its own because it was a shared heritage—a possibility in the seventeenth century that may be hard to imagine for citizens of contemporary postcolonial nation-states.

The Mughal Socialization to the Hanafi Legal System

We examine the substantive law (*furuʿ al-fiqh*) alongside political theory and theological ideas. That is, we take jurisprudence (*fiqh*) as a corpus of knowledge that was always in a dynamic relation with other textual sources, state practices, and individual behavior to triangulate them. While the language of *fiqh* may appear purely substantive, it was in a relation to the social processes, whose effect on legal change was gradual and slow. The law changes much more slowly than the kind of changes historians often wish to find in the archives. Legal continuities and ruptures are not immediate, sudden, or brutal but take centuries. Conceptual continuities persisted from early Hanafi doctrines. We take law in its applied form as written legal opinions and formal state processes that help disentangle the social, economic, and institutional history of Mughal South Asia.

Three aspects of Timurid state-building activity have been poorly studied. Sanjay Subrahmanyam has explained the connected histories between the Gunpowder Empires as part of

larger historical processes.[38] First, a shared "law of the land" is the most significant of all commonalities between the Mughals and the Ottomans. How could Delhi and Istanbul—worlds so far apart from each other, be so similar, if not for the law? The adaptation of Hanafi law to divergent contexts of ecology, geography, local customs, and social cultures between the two empires and their administrations are absent. Rather than Ottoman historiography, Mughal historiography bears the overwhelming burden of the responsibility for the lack of comparative analyses due to its disinterest in the Hanafi legal culture. Second, Aurangzeb ʿAlamgir was born into a dynastic lineage with professional specialization in state-making for over three centuries. The memories of Timurid administrative practices from Iran, Persian and Chaghatay Turkish documentary culture as well as Central Asian Hanafism were household realities at the imperial court. Even though they appear as disjointed worlds separated by spatial and temporal distances for us, these *longue-durée* genealogies require an independent investigation. Third, local customs were prevalent in different regions (*vatan*/*desa*) of the Mughal Empire. Judicial officials took them into account without codifying them as customary law. South Asian historians have rejected the colonial discourse on Indian customs while doing little to tell us how those customs were at play within the bounds of the written law, that is, the Hanafi school of jurisprudence. Any study of the Mughal State oblivious to its surrounding transregional world isolates the Timurids from their own lived realities.

Our analysis throughout the dissertation opens themes from three contemporary perspectives: "Law and Politics," "Law and Economics," and "Law and Religion." First, in the

[38] Sanjay Subrahmanyam, "A Tale of Three Empires: Mughals, Ottomans, and Habsburgs in a Comparative Context," *Common Knowledge* 12, no. 1 (2006): 66–92; Sanjay Subrahmanyam, "Connected Histories: Notes towards a Reconfiguration of Early Modern Eurasia," *Modern Asian Studies* 31, no. 3 (1997): 735–62. For a recent comparative study, see Suraiya Faroqhi, *The Ottoman and Mughal Empires: Social History in the Early Modern World* (London: I.B. Tauris, 2019).

state sphere, we analyze the legal architecture of sovereignty as the settlement of the political economy and fiscality. We analyze the theological role of the postprophetic leader (*imam*) through whom state institutions were created. Most notably, his charters, patents, and mandates created various rights and claims. Equally, he appointed judges to run the judicial courts across the Mughal realms. Second, from the economic perspective, we show how Hanafi ideas of value, money, and price determined monetary and price policies. Even Mughal pay slips for menial servants as much as accounting and auditing processes could not be generated without Hanafi juridico-economic concepts and procedures. In the urban commercial sphere, the principal-agent problem was resolved according to Hanafi rules of agency and representation (*wakala*), guaranteeship (*kafala*), transfer of debts (*hawala*), and other procedures that had become widespread by the late seventeenth century. Mughal contracts of lease, rent, and wages were based on the concept of *ijara*. This law had answers for the persistent problem of highway robbery and dacoity (criminalized as "thuggie" under colonial rule). During his viceroyalty of Multan, Prince Aurangzeb had managed to get highway crimes under control by employing various coercive and preventive tactics against local tribal groups. For the Mughal State too, highway crimes were criminal offences according to its laws. Third, Hanafi law integrated ethical and religious concerns of the Timurids on matters like usury, illegal gain, and profiteering. Equally, Hanafi law encompassed the totality of religious obligations such as ritual purification, prayer, marriage, and other personal matters.

As an "interpretative community," the *ʿulamaʾ* identified themselves as *ahl al-hall wa'l-ʿaqd* or "the people who loosen and bind." They were supposed to legitimize the legal nature of the Muslim State. The less understood aspect of Islamic legal culture in South Asian historiography remains that the *ʿulamaʾ*'s reflection was not limited to religion (*din*) but encompassed secular matters (*dunya*). Hanafi jurists had an acute understanding of the Mughal State's legal structure,

its proprietary mechanism, and even a historical analysis of how Hindustan had been originally settled as nominal state lands like the Ottoman *miri* when the lands had fallen to the "public endowment" (*bayt al-mal*) upon conquest. Mughal peasants had the possession (*qabd*) of these lands to benefit from its usufruct (*manfaʿa*).

Digging for the ordinary experience of urban subjects in their daily grind, that could be palanquin-bearers, weavers, traders, agents, merchant-bankers as much as middling officials, state agents, and judges, we explain the mechanisms by which Timurid public power offered legal guarantees for protecting livelihoods, contracts, and agreements. Most agrarian communities too were not untouched or outside the legal fold. More than other sections of Mughal society, they were acculturated the most to Hanafi fiscality since they were the ones who predominantly contributed to this state's highly regressive tax structure (like in all premodern states worldwide). Urban middle classes knew little about fiscality they did not encounter; peasants using *cowrie* shells rarely heard of money exchange (*sarf*) or discount rates on bills of exchange (*hundi* and *hawala*). Hanafi law touched them differentially. Village headmen and villagers engaged with revenue officials (*qanungo*, *karori*, *mutasaddi*, *amin*) who made routine inspections of cropping patterns.[39] By the early eighteenth century, they were increasingly seeking legal redress at the judicial courts. They sent petitions to military magistrates and their subordinates on forcible rent collections and demanded compensation for crop destruction by recalcitrant state agents. We have thereby relativized weaving narratives of precolonial subjectivity that tend to be read through community, affect, and custom as the primary lens. Instead, we bring out elite and ordinary Mughal

[39] On assessment methods, see Habib, *The Agrarian*, 230–97.

subjects' legal consciousness. Hanafi law was legible to Mughal subjects through their socialization in the public spaces.

A counterpart to the study of legal normativism is what we call the proceduralism of the Mughal State. Documentary evidence should not be read merely for data or chancery practices alone. Documents are also indices of legal practice. Documents clarify how the law produces a profound impact on determining choices, actions, and orders and how they are adapted to different property circumstances. We take the deeper rules, regulations, and incentive structures into account that can help us go beyond the procedural functions of judicial courts as *sites* of legal activity.[40]

When legal normativism is understood as the deep structure of the ethical, religious, and conceptual significance of Hanafi law for the Timurids, proceduralism appears as the surface structure reflecting the deep structure in state actions. While historians operate with a diffused notion of state power, we argue, instead, that the diffusion of power was a product of state coercion. State power generates its own micro-processes, which could be nitty-gritty rules, regulations, orders, amendments, provisions that produce their effects on how power operates on the ground and is perceived by subjects. Through a critical reading of these minute aspects of law, we open possibilities for demarcating the particularity of Mughal legal culture that had become illegible by the late colonial period due to an admixture of different legal systems, most notably, English common law. Mughal legal history is impossible without the deconstruction of colonial and

[40] Recent studies have primarily focused on *qazi* documents from western and central India. See Farhat Hasan, *State and Locality in Mughal India: Power Relations in Western India, c. 1572–1730* (Cambridge: Cambridge University Press, 2004); Nandini Chatterjee, *Negotiating Mughal Law: A Family of Landlords Across Three Indian Empires* (Cambridge: Cambridge University Press, 2020).

postcolonial iterations hoisted onto a space that had been left vacant. That space was once occupied by Hanafi law.

Historians have yet to come to terms with the legal transformation that Hanafi law brought in guaranteeing claims and rights of subjects as much as expanding the scope for contractual adjudication. How and why did the Timurids decide to apply one rather than another legal opinion and what incentives did they create for the Mughal State's relation with their subjects? This is despite the major consequences it has for our understanding of virtually every major and minor aspect of Mughal fiscality as we will demonstrate throughout the dissertation. The entire legal, financial, monetary management, and fiscal structure of the Mughal State derives from Hanafi law since it was more than law in the narrow sense of the term. Hanafi law was political economy as much as ethical economy. Therefore, bypassing the very foundation—the law, has profound implications for the interpretation of South Asia's precolonial past.

Our attempt has been to recover the deep and indelible imprint that the experience to Islamic law in the Indo-Islamic *longue durée* has left on the subcontinent's peoples. This experience of Mughal subjects was a product of knowing the jurists' legal norms through the Mughal State's legal facts, rules, and regulations. That is, law is a social reality emerging from habit-formation. Property, ownership, and claims in precolonial cultures were not only sites of human passions, desires, jealousies, interests, and calculations; they were very much within the realm of law, that is, reason.

We will return to the themes outlined above throughout the dissertation to recover the historical amnesia of Hanafi law.

Archives and Manuscripts

The archival base on which we are relying in this dissertation can be classified under three headings: the book culture of Arabic and Persian legal manuscripts, Mughal Persian records and correspondence as well as documents in regional languages. Based on a multi-site archival research in India, the United Kingdom, France, and Turkey, our research draws upon a large corpus of unexamined original sources such as legal treatises, chronicles, correspondence, imperial orders, court bulletins, administrative manuals, and inscriptions in several South Asian languages including Persian, Arabic, Rajasthani, Urdu, Kannada, and Sanskrit. While also occasionally using chronicles and narrative sources, we have primarily relied on documents of the daily grind to appreciate the Mughal Empire's quotidian bureaucracy. Through their analysis, we are interested in appreciating disaggregated data, minor scribal annotations, legal terms and clauses, and other such passing references that may seem insignificant but formed the documentary design on which the Mughal Empire ran.

Unlike Sanskrit, the book culture of Islamic legal and theological manuscripts in Arabic, the other South Asian language of high culture remains little studied.[41] Relying on manuscripts of Persian and Arabic *fatawa* available in several Indian repositories, we have reconstructed Hanafi jurists' legal opinions that went into the application of legal norms at Mughal chanceries. Among all these legal works, we privilege the imperial canonization, *Al-fatawa al-ʿalamkiriyya* given its comprehensive treatment of legal opinions as well its wide diffusion in the early modern Hanafi world.

[41] 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.

Documentality is an act of inscription rendering meaning to claims and expressing the promise to guarantee them. Documents form part of this system of cumbersome and mundane bureaucracies.[42] In keeping with our attempt at perceiving law in a comprehensive manner as jurists' doctrine, state norm, and social experience, we reveal how they were intertwined in daily transactions and perceptions of Mughal subjects. Activities were meticulously recorded and generated an endless trail of evidence, loops of information shared among different levels of jurisdictions, and created a pattern for coordinating the timely activities of state agents.

The information economy of Timurid imperial governance was sustained through different bureaucratic mechanisms of keeping inventories (*siyaha*), memoranda (*yaddasht*), statements of facts (*haqiqat*), narrative accounts (*kaifiyat*), news reports (*vaqiʿa*), and journals (*ruznamcha*) that were dispatched to various jurisdictions for verification. Further, information circulation happened through voluminous correspondence between Mughal officers and middling officials stationed in different parts of the empire. We have focused on the study of unread correspondence in Persian and the Dhundari dialect of Rajasthani to reconstruct how state agents coordinated their activities across vast distances. Dhundari, though considered a minor dialect from Eastern Rajasthan today, was a language of high literary culture, state accounting, and official correspondence from the seventeenth century well into the early-twentieth century. In Max Weinreich's aphorism: "A language is a dialect with an army and navy." Dhundari was a language that has been demoted to

[42] For representative studies of scribes, see Muzaffar Alam and Sanjay Subrahmanyam, "The Making of a Munshi," *Comparative Studies of South Asia, Africa, and the Middle East* 24, no. 2 (2004): 61–72; Rajeev Kinra, *Writing Self, Writing Empire: Chandar Bhan Brahman and the Cultural World of the Indo-Persian State Secretary* (Oakland: University of California Press, 2015). On chancery cultures in other Islamicate polities, see Marina Rustow, *The Lost Archive: Traces of a Caliphate in a Cairo Synagogue* (Princeton: Princeton University Press, 2020); Heather L. Ferguson, *The Proper Order of Things: Language, Power, and Law in Ottoman Administrative Discourses* (Stanford: Stanford University Press, 2018).

a dialect today with the dissolution of the armed Kacchawaha princely state. Though, no navy was needed to back Dhundari in the desertic conditions of Rajasthan.

The primary repository of our focus has been the Mughal-Kacchawaha documents housed in the Rajasthan State Archives, Bikaner. The only surviving series of dynastic records attest to the minutest operations as much as to the meticulous way chancery officials maintained high rigor in filing them in an impeccable manner. We have therefore privileged using the originals as they had come from the Timurid imperial court and chanceries of military officers, judges, superintendents, middling revenue officials, representatives, and other state and private agents on a daily basis. It has often been mistakenly assumed that the colonial administrator, James Tod (1782–1835) removed the imperial privy council minutes (*akhbarat-i darbar-i muʿalla*) from Jaipur. The Kacchawaha Rajputs did not part with any of their state records. James Tod's versions are nineteenth-century copies now deposited at the Royal Asiatic Society in London.[43] Unlike Tod's copies, the originals we have consulted do not contain errors since scribal errors were rectified at the Mughal chanceries before documents, correspondence, and minutes were dispatched in sealed silk envelopes by post.

Jadunath Sarkar could collect copies of less than one percent of the Mughal-Kacchawaha records that were still housed at the Kapad Dwara in the Jaipur City Palace before Indian independence. In Sarkar's words:

> Nowhere else in India can we find even a tenth of the mass of *farmans*, *parwanahs*, reports, newsletters and other historical documents exchanged between the Mughal Government of

[43] I have avoided using copies made for James Tod now housed at the Royal Asiatic Society, London and for Jadunath Sarkar housed at the National Library of India, Kolkata. They contain several transcription errors of conventions, names, and scribal notations.

> Delhi and the Court of Jaipur, or between the Rajahs and their officers and allies…The historian who has such a rich variety and profusion of the pure raw materials of his craft at his command, may well congratulate himself on holding a position unmatched elsewhere in the realm of Indian historiography.[44]

Despite Sarkar's glowing tribute nearly a century ago, it is surprising that this repository containing no less than half a million pages worth of material of all possible kinds—after all, this was the household of one of the highest-ranking military officers and confidants of the Mughal State—remains virtually unread to this day. Ironically, later generations of Mughal historians have assumed that the kind of archives available for European dynastic households do not exist for Mughal history. Unlike most contemporary studies that use small documentary collections that offer little to no context such as the material available in the National Archives of India, New Delhi, the Uttar Pradesh State Archives, or the Allahabad Museum, we have privileged these serialized chancery records, perhaps, the only one of its kind representing the activities of an *amir* of any Muslim State in the entire world.

We have also extensively referred to the Mughal military and fiscal documents pertaining to the Deccan *suba*s now housed in the Telangana State Archives in Hyderabad. Not only enough sources have survived, for no precolonial ruler's reign do we have as many sources as Aurangzeb ʿAlamgir's—amounting to nearly a million pages. Certainly, these million pages are far less than what Ottomanists can boast of. But then what is the point of the oft-repeated lament in Mughal historiography that archives do not exist when half a million pages of the Mughal-Kaccawaha records have been waiting idly for their readers since the day the Rajput chanceries prepared them?

[44] Jadunath Sarkar, *A History of Jaipur, c. 1503-1938* (Hyderabad: Orient Longman, 1994), ix.

Equally, the other modern lament that precolonial "archives" have been dispersed due to colonial intervention in the sphere of knowledge production too is an untenable one. The largest Mughal records remain in India even though manuscripts were dislocated during colonial rule. The Mughal-Kaccawaha records remained in the Amer Fort's offices in the seventeenth century and were later moved to Jaipur when the capital was shifted in 1727. They were finally transferred to Bikaner in the 1960s when the Rajasthan State Archives were created.

Many tomes of history can be written out of these records. The constitution of these records themselves need to be the subject of a monograph on how precolonial chanceries sustained state institutions. They were the site of bureaucracy, paper, and correspondence without which state formation would have come to naught. Indeed, the historical analysis of these archives as much as their careful edition could have contributed towards generating a different set of historiographical questions for the late seventeenth century. A century's neglect of these sources and Hanafi law represents a "lost opportunity" for Mughal historians to weave narratives that could have gone a long way in reorienting the nature of Islamicate sovereignty away from its successive "communalization." As we will argue throughout this dissertation, Aurangzeb ʿAlamgir's reign and the legal design of the late-seventeenth-century Mughal Empire remain poorly understood, if at all, in most of their elementary dimensions.

Dissertation Chapter Outline

In chapter 1, we examine the *longue-durée* culture of the canonization of Hanafi law at courts and political centers of Hindustan (Northern India). The practice of compiling *fatawa* dates to as early as the Delhi and the Jaunpur Sultanates. Through centuries of circulation, northern Indian Hanafi legal culture deeply integrated the scholarship of Transoxanian jurists. In this chapter, we

examine the salient features of canonization to articulate the continuities that exist through Indo-Islamic rule. By the early eighteenth century, *Al-fatawa al-ʿalamkiriyya* would become the most cited and up-to-date authoritative *fatawa* compilation.

In chapter 2, we describe the basic morphology of the property structure and contractual relations in the Mughal Empire. Critiquing different colonial and Eurocentric perceptions, we argue that notions of Hanafi law were central to the creation of diverse property regimes in the urban and rural spheres. We emphasize the legal fact that all imperial acts of creating property and usufructuary rights are governed by different contractual rules framed by Hanafi jurists.

In chapter 3, we illustrate the complex nature of the urban centers of northern and central India in the second half of the seventeenth century. Analyzing the distinctions between walled cities and their suburbs, we argue that suburban expansion happened primarily through the grant of imperial privileges to the military elite for the construction of agglomerations (*purajat*). Moreover, state properties dotted the prime real estate in city centers meant for public purposes and housing and gardens of the elite. Different methods of property escheat of the imperial elite by the state and the application of provisions from inheritance laws created a mosaic of differentiated urban property rights. Beyond the elite, the town dwellers lived in fully ownable personal properties (*tamlik*). Hence, we map aspects that help better understand the nature of urbanization.

Chapter 4 develops the expansive scope that the Hanafi concept of lease (*ijara*) had in Mughal practices. Rather than being revenue farming, as it is often assumed to be, the concept of lease involves various kinds of contracts for usufruct, including the employment of artisanal services and manual labor. We articulate the particularly lucrative use of leasing in commercial cultivation by studying Hanafi lease agreements. Therefore, we argue for the centrality of *ijara*

throughout Mughal rule though its primary use for revenue farming became apparent only in the first half of the eighteenth century.

In chapter 5, we offer an interpretation of Timurid monetary sovereignty through various Hanafi concepts of money, price, and value that governed the monetary policy. In particular, we show that the maintenance of the money of account's circulation was a prime consideration for which the principle of exchange (*sarf*) had been designed by Hanafi jurists. Examining the collection of price data by censors, we show the integrated nature of money management and price verification. Therefore, we argue that Hanafi law is more than law in the narrow sense of the term; it is above all political economy for the Timurids.

In chapter 6, we turn our attention the mechanisms of credit, intertemporal transfer of money, and agency involved in the fiscal and the commercial spheres at court and in cities. First, we examine how different kinds of promissory notes originating in Hanafi law were primary means for credit mechanisms, including the bill of exchange, the *hundi* that served the purposes of *hawala*. Second, we probe the nature of intermediation and agency of representatives acting according to the Hanafi institution of *wakala*/*vakalat*. Third, we illustrate the spatial character of the Mughal Empire's financial portfolio held across its jurisdictions. Overall, this chapter highlights the types of liabilities contracts generated in Mughal cities and how their settlement was adjudicated at police stations and judicial courts.

In chapter 7, we analyze the nature of Timurid public power from the perspective of doctrines and practices of imamate articulated in rational theology (*kalam*) and jurisprudence (*fiqh*). We illustrate the distinct effects this idea of unitary sovereignty on religious affairs of Islam (*din*) and secular affairs of all subjects (*dunya*) could take in reality. Taking a few case studies, the chapter brings out the concepts of justice that emerge from the institutional mechanisms in place

in the major cities. The legal design of the Mughal Empire by the late seventeenth century was based on the information and time coordination carried out from the imperial court as the nodal agency.

In conclusion, we argue for evaluating the nature of Timurid public power through history as a lived experience rather than representation.[45] We move away from writing history based on chronicles and narratives, which are mostly in the realm of representation. Instead, we read state documents, legal deeds, and correspondence that, while being still in the realm of representation, were much more intentional acts and legal facts pertaining to discrete instances when historical actors made their moves. Religion, politics, and law were intertwined in Islamicate polities. We avoid artificial attempts to either separate them or categorize precolonial socialities along the lines of "syncretism," "composite culture," and "accommodation."[46] Through the legal socialization of Mughal subjects, we articulate a different concern: the Mughal State's role in safeguarding the interests of non-Muslims, *its* "protected communities" (*ahl al-dhimma*) according to the "secularity" integral to Hanafi law. Bringing out the emic Mughal category of *qaum* that also subsumed *jati*, we avoid placing Timurid sovereignty under the sign of a Hindu-Muslim binary. Any such binary does injustice to the stratified nature of precolonial social relations as much as ends up spiraling into flattening the Mughal lifeworld of over 100 million subjects who belonged to a wide variety of *jati* and *qaum* identities. An angle that remains less thought out is the relation between elite and lower-class Muslims or upper-caste "Hindus" with lower castes, that is, Muslim-

[45] Frank Ankersmit, *Meaning, Truth, and Reference in Historical Representation* (Ithaca: Cornell University Press, 2012).

[46] For a critique, see Muzaffar Alam and Sanjay Subrahmanyam, "Acculturation or Tolerance? Interfaith Relations in Mughal North India, c.1750," *Jerusalem Studies in Arabic and Islam* 33 (2007): 427–66; Sanjay Subrahmanyam, "Before the Leviathan: Sectarian Violence and the State in Pre-Colonial India," in *Unravelling the Nation: Sectarian Conflict and India's Secular Identity*, eds. Kaushik Basu and Sanjay Subrahmanyam (New Delhi: Penguin, 1994), 44–80.

Muslim and Hindu-Hindu interactions. We will argue that the infectious term coined with a unique Indian meaning, "communalism," was not a seventeenth century problem even if it emerged as one in the nineteenth century for reasons that need not detain us here.

In attempting to untie these knots, the dissertation brings out the relation between the normative world of Hanafi legal texts and their effect on the real world. Through Mughal institutions, Hanafi law constantly molded social interactions within public spaces. Because of this intermingling, the public life was "secular" even though private lives remained highly stratified and often closed off between communities by ritual distinctions, caste markers of purity, pollution, and untouchability, ethnic segmentation, patriarchy, skewed gender norms, clothing and headgear demarcations, inter-dining, and segregated urban neighborhoods. The rights of Mughal subjects, irrespective of their religion, were not ensured due to some sort of innate benevolence on the part of the Timurids nor the magnanimity of the so-called Hindu-Muslim interaction. The very legal system constitutive of the Muslim State guaranteed their rights as much as preserved the plurality of South Asia with its ensuing social fragmentation and entrenched economic inequity.

Chapter 1

Law-Making in the Islamicate Courts:

Fatawa and the Production of Legal Doctrine for Statecraft

The Delhi Sultanates (c. 1200–1526) and the Sharqi Sultanate of Jaunpur (1394–1495) were centers for the formative development of Hanafi law in northern India before Mughal rule. In this chapter, we examine the proliferation of *fatawa* collections and the body of substantive law they produced at Indo-Islamic courts. Rather than making pure compilations of legal opinions, the authors of *fatawa* clarified variant explanations in established doctrinal sources. Through an iterative process of legal canonization, jurists ascertained the validity of juridical positions. This "cycle of juristic renewal" was founded on disagreement (*ikhtilaf*) between divergent interpretations of law and its application. *Fatawa* were composed from the thirteenth century well into British colonial rule in the nineteenth century. They are a mine of Hanafi legal knowledge.[47]

Guiding the Sultans in Statecraft: The *ʿulamaʾ* and the Compilation of *fatawa*

The term *fatwa* originally referred to a response that a mufti or jurist issued on a particular legal problem on which an individual or a group requested his opinion (*istiftaʾ*). Over times, the plural form, *fatawa*, came to designate a compilation of the legal opinions of earlier jurists. Wael Hallaq makes a distinction between "primary" and "secondary" *fatwa*s, because they "strip" legal precepts from their context in primary *fatwa*s by "editing" and "abridgment."[48] The compilations

[47] For a few studies, see Zafarul Islam, "Origin and Development of *Fātāwa* Compilation in Medieval India," *Studies in History* 12, no. 2 (1996): 223–41; Zafarul Islam, *Fātāwa Literature of the Sultanate Period* (New Delhi: Kanishka Publishing House, 2006).

[48] Wael B. Hallaq, "From *Fatwas* to *Furūʿ*: Growth and Change in Islamic Substantive Law," *Islamic Law and Society*

we study in this essay are "secondary" ones in nature. Unlike most *fatawa* collections in the Arabic and the Ottoman worlds that include responses of a single jurist, in the Indian subcontinent, the historical trajectory is different. Indian *fatawa* collections assemble earlier legal opinions from different sources such as *Zahir al-riwaya*, *shuruh*, and *fatawa*.

The earliest compilation in the Indian subcontinent, *Majmuʿa-yi sultani*, was reportedly composed in Persian by the jurists for Mahmud of Ghazna (r. 998–1030). The legal manual opens with the claim that the learned scholars, unable to accompany Mahmud during his military campaigns, compiled a concise compendium explaining the daily rituals he was obliged to perform as a Muslim. Various chapters deal with legal norms he should impose on his soldiers and military entourage. The *Majmuʿa-yi sultani* states: "This book pertains to the explanation of legal problems (*dar bayan-i masaʾil-i fiqh*) rendered at Sultan Mahmud Ghazni's request to the shaikhs and the *ʿulamaʾ*."[49] Each legal problem (*masʾala*) is treated in a query (*suval*) and response (*javab*). The answers are given in a *mélange* of Persian and conventional Arabic argumentation: "such [is the argument] in…" (*bashad kadha fi*) or "it is worthy in the manner of…" (*shayad chun*). If this manual for ritual practice was truly made for Mahmud of Ghazna, it would be one of the earliest works composed in classical Persian. However, the fact that this compilation cites several later works of jurisprudence, makes its attribution to Mahmud spurious.[50]

In order to understand the relationship between law-making and royal commissioning of

1, no. 1 (1994): 44.

[49] *Majmuʿa-yi sultani,* MS Persian 616, Raza Library, Rampur, fol. 1b.

[50] Another apocryphal work of a similar nature, *Fatawa-yi akbarshahi*, reportedly commissioned by Akbar, can be found in South Asian manuscript collections. *Fatawa-yi akbarshahi*, MS Persian 113, Telangana Government Oriental Manuscript Library and Research Institute, Hyderabad.

juridical treatises, we turn to the Delhi Sultanates, which were the early Muslim States in northern India.[51] During Firuz Shah Tughlaq's (r. 1351–1388), two collections were dedicated to the sultan: Sharaf Muhammad ʿAttari's *Favaʾid-i firuzshahi* and Sadr al-Din Yaʿqub Muzaffar Kirmani's *Fiqh-i firuzshahi*.[52] Kamal al-Din b. Karim al-Din Nagauri, who served as *Sadr-i jahan* (Chief of religious endowments) reworked Kirmani's *Fiqh-i firuzshahi*, which had been left in an incomplete draft version.[53]

Fatawa compile legal precepts on each topic of juridical doctrine in separate *kitab*s (chapters). The topics could be personal piety, civil relations, or public affairs, including matters relating to taxation, legal adjudication, and settlement of debts. Substantial law provided the sultans with rules for a large set of political obligations concerning taxation, the poll tax, land grants, the appointment of judges, and dispute resolution. Islamic legal doctrine also provided rulers with methods and norms to frame their policies on price regulation in the markets, the distribution of revenue assignments (*iqtaʿ*), the imposition and abolition of imposts, and policing urban settlements. On all these matters, the sultan enjoyed extensive powers in decision-making, the application of laws, and punitive measures.[54] The *ʿulamaʾ* maintained the privilege of developing the juridical discourse and offering legal advice. When personal doubts on the legality

[51] See Sunil Kumar, *The Emergence of the Delhi Sultanate, 1192–1286* (New Delhi: Permanent Black, 2007); Mian Muhammad Saeed, *The Sharqi Sultanate of Jaunpur: A Political and Cultural History* (Karachi: University of Karachi, 1975); Saiyid Iqbal Ahmad Jaunpuri, *Tarikh-i salatin-i sharqi aur sufiyaʾ-i Jaunpur.* Jaunpur: Idara-yi Shiraz-i Hind Publishing House, 1988.

[52] Kamal al-Din Nagauri also composed *Majmuʿa-yi khani ʿan al-maʿani* at the behest of Firuz Shah's son, prince ʿIzz al-Din Ulugh Qutlugh Bahram Khan. See *Majmuʿa-yi khani ʿan al-maʿani*, MS supplément persan 1212, Bibliothèque nationale de France, Paris.

[53] The *muqaddima* (prolegomena) explains how the draft version was revised. *Fiqh-i firuzshahi*, MS IO Islamic 2987, British Library, London, fols. 1b–2a.

[54] See Ishtiaq Husain Qureshi, *The Administration of the Sultanate of Dehlī* (New Delhi: Oriental Books, 1971), 157–74; 244–46.

of administrative decisions arose among courtiers, *fatwa*s were routinely issued to find legal solutions. For instance, in 1375, Firuz Shah prohibited some practices at court on the ground that they were non-canonical (*na mashruʿat*), e.g., the use of statues and images in the palaces and bed chambers and the use of silver and gold utensils. He also abolished non-canonical taxes, *mustaghall* (house and shop rents), *jazari* (tax on cow slaughter), and *dauri* (transport tax on draft animals); he did so after consulting with the *ʿulamaʾ*, who issued a *fatwa* on the legal non-permissibility of these policies.[55]

Firuz Shah commissioned the construction of several canals in Fatehabad and Hisar Firoza. These canals irrigated agrarian lands and large settlements in Jind, Dhatrath, Hansi, and Tughluqpur (in present-day Haryana in the environs of Delhi). The chronicler of his reign, Shams-i Siraj ʿAfif reports that Firuz Shah convened the *ʿulamaʾ* for advice on the right of an individual who constructed a canal to receive financial compensation for his labor. The *ʿulamaʾ* suggested to Firuz Shah that he could charge all beneficiaries of the canal *haqq al-shurb* (right to drink) at the rate of ten percent of the land rent. Satisfied with this response, Firuz Shah took entire revenue proceeds from the canal fees into his personal treasury account. Here, he acted in his individual capacity as someone who had commissioned the canal construction. Had he acted in his position as sultan, the revenue proceeds would have entered into the accounts of the *bayt al-mal*.

The right to drink is an easement or utilization (*haqq al-irtifaq*), the right to benefit from someone else's immovable property free of cost.[56] The right to drink is an established legal

[55] Shams-i Siraj ʿAfif, *Táríkh i fírozsháhí*, ed. Maulavi Vilayat Husain (Calcutta: Asiatic Society of Bengal, 1891), 373–79 (Shams-i Siraj ʿAfif, *Tarikh-i-Firoz Shahi*, trans. Ishrat H. Ansari and Hamid al-Siddiqi (Rampur: Rampur Raza Library, 2015), 233–36).

[56] Other such rights include the right to pass through someone else's land to access one's own land (*haqq al-murur*), the right to prevent modifications in adjoining properties that could negatively affect one's own property (*haqq al-jiwar*), the right to fetch water from adjoining canals (*haqq al-majra)*, etc. On Islamic water law, see John C.

principle in Islamic law: no individual can be prevented from utilizing free-flowing waters, such as rivers and canals, though a canal builder can claim rent on canal use as compensation for his efforts. In his *Kitab al-kharaj*, Abu Yusuf (d. 798) established this legal convention for Iraq. The Euphrates and Tigris rivers are not private property, and everyone had the right to benefit from its waters.[57] This idea is similar to Roman legal doctrine, which designates the aqueducts that supply water to the cities as *rem publicam*, literally a public good that belongs to the Roman people collectively. These public goods could not be owned by a Roman citizen, nor sold to one. In Islamic law, too, rivers and canals are "public goods" which cannot be privatized.

ʿAlaʾ al-Din Khilji (r. 1296–1316) requested that his *qazi*, Maulana Mughis al-Din of Bayana, advise him on *jizya*. As reported in Ziyaʾ al-Din Barani's *Tarikh-i firuzshahi*, this conversation not only exemplifies interaction between the sultan and his jurist on matters of jurisprudence, but also it reflects the conflict of interest between legal doctrine and political exigencies. Khilji's first question dealt with the legal status of Hindus who paid tribute (*kharaj guzar va kharaj dih hindu*). Hindus, as polytheists, were technically infidels (*mushrik*) and were not recognized as "people of the book." Yet they had been granted *dhimmi* status. Only monotheists, the "people of the book" (*ahl al-kitab*) are considered "protected communities" (*ahl al-dhimma*). The capitation fee was imposed on these communities in return for safety and security, and they were guaranteed the right to conduct their personal, religious, commercial, and civil affairs. It seems Indian Hanafis made an exception for Hindus and treated them as *dhimmi*s. In his response to Khilji, Mughis elaborated the Hanafi view that accepted Hindus as *jizya*-paying

Wilkinson, "Muslim Land and Water Law," *Journal of Islamic Studies* 1 (1990): 54–72.

[57] Abu Yusuf, *Le livre de l'impôt foncier (Kitâb el-Kharâdj)*, trans. E. Fagnan (Paris: Paul Geuthner, 1921), 143–55.

*dhimmi*s: "Except for *imam-i aʿzam* [Abu Hanifa], to juridical school we belong, no other school of agrees with the view that *jizya* can be accepted from the Hindus."[58] Baber Johansen argues that jurists sometimes abandon the "universalism" of legal norms in favor of "politico-military norms" when it is impractical to implement the former.[59] It is not clear when this distinct legal treatment of the Hindus, a non-monotheistic religious community, emerged in the Hanafi school. Mughis's opinion is perhaps the earliest legal justification in the subcontinent for treating Hindus as *dhimmi*s.

Khilji himself acknowledged that he barely followed the logic of Mughis's legal arguments. He shifted attention to more pressing questions on his status as sultan: whether the war booty belonged to him or the *bayt al-mal*, that is, the treasury of the Muslim community he held in trust. Mughis sought to avoid Khilji's wrath. Weighing his words carefully, he argued that the shares of the sultan and his sons were meagre, and he could not claim any part of the booty for himself. Fully aware that Khilji would be annoyed by answers unfavorable to him, Mughis maintained that he was only stating the *shariʿa* rules and the sultan could kill him at once, if he desired. But Mughis was definitive: Khilji's attempts to usurp more powers and prerogatives were "contrary to the *shariʿa*" (*mashruʿ nist*). Although Khilji was disappointed by the *qazi*'s answers, he was pleased with his honesty and spared his life.

Barani mentions forty-six scholars with whom he studied personally. Many were disciples of *émigré* scholars who settled in northern India during Khilji's rule. One of these was a scholar of Turkic origin, Farid al-Din ʿAlam b. al-ʿAlaʾ al-Indarpati, known as Khan-i aʿzam Tatar Khan.

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[58] Ziyaʾ al-Din Barani, *The Táríkh-i Feroz-sháhí of Ziaa al-Din Barni*, ed. Saiyid Ahmad Khan (Calcutta: Asiatic Society of Bengal, 1862), 291 (Ziyaʾ al-Din Barani, *Tarikh-i Firoz Shahi*, trans. Ishtiyaq Ahmad Zilli (New Delhi: Primus Books, 2015), 177). Translation modified.

[59] Baber Johansen, "Entre révélation et tyrannie: le droit des non-musulmans d'après les jurists musulmans," in *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim* Fiqh (Leiden: Brill, 1999), 219–37.

Styled Tatar Malik by Muhammad b. Tughlaq (r. 1325–51), Tatar Khan received a benefice in Zafarabad; he was known for not deviating "even a hair's breadth" from the *shariʿa*. According to ʿAfif, the chronicler of Firuz Shah's reign, Tatar Khan moved from the *shariʿa* (God's law) toward the path of *tariqa* (gnostic way) and then, the *haqiqa* (reality).[60] The spiritual journey from knowledge of God's law to the true reality of the gnostic path was a well-known process. Many *ʿulamaʾ*, shaikhs, and Sufis believed that personal ethical obligations must be based on both the *shariʿa* and inner spiritual truth. Tatar Khan wrote a *tafsir* (exegesis) on the Qurʾan and also compiled the *Fatawa tatarkhaniyya*:

Khan-i aʿzam [Tatar Khan], an inquirer of religion, compiled a *fatawa*. This kind of compilation was based on collecting legal precepts from the copies of *fatawa* that existed in the city of Delhi. On each legal problem and dictum (*kalima*) where disagreement exists between muftis, he prepared his own legal opinion …He recorded the disagreements of each mufti and ascribed to them the *fatwa*s they had issued.[61]

Fatawa tatarkhaniyya was widely read across the Indian subcontinent, in the Ottoman realms, and in Central Asia. A manuscript copy, perhaps made in the sixteenth century, is housed in the Raza Library, Rampur. This manuscript was acquired by the Mughal imperial library c. 1630s. Shah Jahan characterized the book as *duyum* ("second grade") and registered it in the inventory with his own hand.[62] The evaluation of books based on their quality, provenance, and

[60] ʿAfif, *Tarikh-i firuzshahi*, 392 (Eng. trans., 246). For a biography of Tatarkhan, see Riyasat Ali Nadvi, "Khan-i aʿzam tatar khan aur uski yadgar ʿilmi khidmat," *Maʿarif* 29, no. 2 (1932): 86–96.

[61] ʿAfif, *Tarikh-i firuzshahi*, 392.

[62] *Fatawa tatarkhaniyya*, MS Arabic 2454, Raza Library, Rampur, 51.

calligraphy were well-known procedures at the Mughal court.[63] The manuscript contains *arz-dida*s (inspection seals) made during the reigns of Shah Jahn and Aurangzeb ʿAlamgir.[64]

Fatawa as a Genre of Legal Transmission: Compilation of Legal Precepts

In sixteenth-century Mughal intellectual circles, *Fatawa ibrahimshahiyya* was a well-known compilation. The Sharqi Sultanate, with its capital Jaunpur near Ilahabad (eastern Uttar Pradesh) is largely unknown today. This short-lived polity, which acted as a nodal point between Delhi to the west and Bengal and Bihar to the east, attracted several scholars from the Indo-Gangetic plains, especially Delhi, in the wake of Timur's raids in 1398.[65] During the reign of Ibrahim Shah Sharqi (r. 1401–40), Jaunpur was renowned for its *madrasa*s and theological erudition in Arabic. In 1616, ʿAbd al-Baqi Nahawandi acclaimed the greatness of Jaunpur:

> The *ʿulamaʾ* and the grandees who were afflicted with misfortune following the tumults [i.e., Timur's invasion], settled in Jaunpur, which was in those days the abode of faith (*dar al-iman)*, the abode of the sultanate (*dar al-saltanat*), and the abode of knowledge (*dar al-ʿilm*). Some of the books and epistles of increasing fame that were composed in those times were *Hashiya-yi hindi*, *Bahr al-mawaj*, *Fatawa-yi ibrahimshahi*, *Irshad*, and others.[66]

[63] A manuscript copied in 861 AH/1457 belonging to the Ottoman imperial library is still housed at the Topkapı Palace in Istanbul. *Fatawa tatarkhaniyya*, MS Arabic 827/2, Topkapı Sarayı Müzesi, Istanbul.

[64] For a detailed analysis of this process, see John Seyller, "The Inspection and Valuation of Manuscripts in the Imperial Mughal Library," *Artibus Asiae* 57, nos. 3-4 (1997): 243–349.

[65] For biographies of the learned scholars in Jaunpur, see Saeed, *The Sharqi Sultanate*, 172–191; Saiyid Iqbal Ahmad Jaunpuri, *Tarikh-i salatin-i sharqi aur sufiyaʾ-i Jaunpur* (Jaunpur: Idara-yi Shiraz-i Hind Publishing House, 1988). A detailed analysis of Sharqi mosque and *madrasa* architecture can be found in A. Führer, *The Sharqi Architecture of Jaunpur; with Notes on Zafarabad, Sahet-Mahet and Other Places in the North-Western Provinces and Oudh* (Calcutta: The Superintendent of Government Printing, 1889).

[66] ʿAbd al-Baqi Nahawandi, *Maathir-i-Rahimi*, ed. Shamsul Ulama M. Hedayat Khan, vol. 1 (Calcutta: Asiatic Society

Shihab al-Din Ahmad Shams al-Din ʿUmar b. Muhammad (d. 1445), known as *Malik al-ʿulamaʾ* (master of the scholars), was *Qazi al-quzat* of Jaunpur during Ibrahim Shah's reign. He was invested as a Sufi by Saiyid Ashraf Jahangir Simnani (d. 1425),[67] a rival of Shaikh Badiʿ al-Haqq wa-l-Din Shah Madar. Firishta claims that Shihab al-Din was a native of Gazanin and received his early education in Daulatabad. Later sources say that Shihab al-Din lived in Delhi and escaped with his master Maulana Khwajagi when Timur sacked the city.[68] Shihab al-Din composed works in Arabic, such as *Sharh-i hindi*, *Irshad al-nahw*, and *Taysir al-ahkam*.[69] The latter was a personal legal manual for Ibrahim Shah on the rules of worship (*ʿibada*). His *Fatawa ibrahimshahiyya* is dedicated to and named after Ibrahim Shah. The spiritual relationship between the sultan and his *Qazi al-quzat* was deep: when Shihab al-Din fell ill, Ibrahim Shah apparently drank from the same cup of water as the jurist to ward off evil. It is reputed that when Shihab al-Din succumbed to his illness, Ibrahim Shah died of grief the same year.[70]

Modern scholars and cataloguers often attribute the *Fatawa ibrahimshahiyya* to the patronage of another Ibrahim Shah (r. 1535–57), the Bijapur sultan in the Deccan.[71] In fact, three

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of Bengal, 1924), 99. Khwaja Nizam al-Din Ahmad, *The Tabaqat-i Akbari of Khwajah Nizamuddin Ahmad (A History of India from the Early Musalman Invasions to the Thirty-Eighth Year of the Reign of Akbar)*, trans. B. De, vol. 3 (Kolkata: Asiatic Society, 2015), 449–50. Like Muhammad Hindu Shah Astarabadi Firishta, Nahawandi copied this passage verbatim from Akbar's imperial *bakhshi* (paymaster), Khwaja Nizam al-Din's *Tabaqat-i akbari*, who owed his knowledge to a lost text called *Tarikh-i ibrahimshahi*—the original in a chain of transmission for the chronicle.

[67] Gholam Sarwar, *Persian Studies under the Sultans of Bengal (1204–1576 A.D.)* (Kolkata: Asiatic Society, 2017), 96.

[68] See Saeed, *The Sharqi Sultanate*, 181–84.

[69] *Taysir al-ahkam*, MS supplément persan 1684, Bibliothèque nationale de France, Paris.

[70] Such vignettes are a *leitmotiv* of the profound trust that rulers had with judges. See, for example, Mathieu Tillier, *Les cadis d'Iraq et l'État abbasside (132/750–334/945)* (Damascus: Presses de l'Ifpo, 2009).

[71] Zafarul Islam points to this discrepancy but does not provide a definitive answer. Islam, "Origin and Development," 227. His list includes the catalogues of Khuda Bakhsh Library, Patna; the National Library, Calcutta; and those of Marshall. See D. N. Marshall, *Mughals in India: A Bibliographical Survey* (Bombay: Asia Publishing House, 1967), 1:445. However, the catalogues of the Raza Library, Rampur, and the Salarjung Museum, Hyderabad accurately

chroniclers, Khwaja Nizam al-Din Ahmad, ʿAbd al-Baqi Nahawandi, and Muhammad Qasim Hindu Shah "Firishta" discuss the work while describing the Jaunpur Sultanate. Qazi Chakan al-Gujarati al-Hindi from Kiraw, Gujarat (d. 1514), a well-known judge, cites the *Fatawa ibrahimshahiyya* in *Khizanat al-riwayat*.[72] Ironically, the British colonial administrator and judge at the *Sadr Diwani Adalat* at Calcutta, John Herbert Harington (1765–1828) was also familiar with the Jaunpuri provenance of *Fatawa ibrahimshahiyya*. Like Badayuni, Harington even added that the work was not authoritative, perhaps, based on the opinion of *mavlvi*s he consulted in early nineteenth-century Calcutta.[73] The attribution of the work to the Bijapur Sultanate rather than the Jaunpur one reveals the gap in contemporary knowledge about elementary aspects of Islamic textual culture in the subcontinent.

In *Muntakhab al-tavarikh*, ʿAbd al-Qadir Badayuni (b. 1540), the famed scholar at Akbar's court, refers to a juristic disagreement between Shaikh Hatim Sambhali, Shaikh Bahaʾ al-Din, and Shaikh Mubarak Nagauri (father of the Mughal emperor, Akbar's courtier, Abu al-Fazl) on a point of law in the *Fatawa ibrahimshahiyya*. Shaikh Hatim was a disciple of Miyan Hatim Sambhali, under whose auspices, at the age of twelve, Badayuni had learnt Busiri's *Qasidat al-burda*, a panegyric on the Prophet and Nasafi's manual of Hanafi law, *Kanz al-daqaʾiq*. The disagreement concerned the right of parents to sell their legitimate child if they face dire financial circumstances.

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attribute the work to the patronage of Ibrahim Shah Sharqi of Jaunpur.

[72] *Khizanat al-riwayat*, MS Arabic 156, Buhar Collection, National Library of India, Kolkata. For the importance of Chakan al-Gujarati's work, see M. Khalid Masud, "*Adab al-Mufti*: The Muslim Understanding of Values, Characteristics, and Role of a *Mufti*," in *Moral Conduct and Authority: The Place of* Adab *in South Asian Islam*, ed. Barbara Daly Metcalf (Berkeley: University of California Press, 1984), 129. Moreover, Muhammad Kashmiri Khaki also cites *Fatawa ibrahimshahiyya*. *Fawaʾid al-muslimin*, MS Arabic 2364, Khuda Bakhsh Oriental Library, Patna, fol. 9b.

[73] 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): 500–1.

Although jurists lacked consensus on the validity of this legal opinion, Shihab al-Din justified its use on the ground that the *Fatawa ibrahimshahiyya* had endorsed it. Badayuni requested a legal opinion (on behalf of Shaikh Mubarak) from Shaikh Hatim. Shaikh Mubarak sought Shaikh Hatim's suggestion before he would seal his *fatwa*.[74] The problem arose when another scholar, Shaikh Baha᾽ al-Din, based on his reading of the *Fatawa ibrahimshahiyya*, upheld the parents' right to sell a legitimate child.

Shaikh Hatim contended that this allowance was reported only in that work (*rivayat-i khassa-yi ibrahimshahi*) and was not sanctioned in other compilations. He also provided a reason for whether it could be practiced and explained the meaning of Shihab al-Din's position. Shaikh Hatim added that any mufti had the right to decide by giving preference to one legal opinion over others (*tarjih*). Setting aside other legal opinions based on *tarjih* does not mean rejecting their validity. However, this case was compounded with a further difficulty. In his reply (*marjuʿa)*, Shaikh Hatim added that *tarjih* was not admissible if a juristic consensus already existed. A unanimous opinion among all earlier scholars of the *madhhab* left no scope for setting aside. Shaikh Baha᾽ al-Din was correct in following the *Fatawa ibrahimshahiyya* and his approval made it valid law. Shaikh Hatim further clarified the decision to sell legitimate children in case of distress. He explained to Badayuni that in the *Fatawa ibrahimshahiyya*, the term *abawayn* (lit., parents, in the dual form for fathers), means the father and the grandfather and not the father and the mother. In fact, in the chapter on marriage, *abawayn* does refer to the father and the grandfather. Shaikh Hatim reasoned that since the sale of legitimate children was possible only

[74] ʿAbd al-Qadir Badayuni, *Muntakhab al-tavarikh*, ed. W. Nassau Lees and Ahmad Ali Maulavi, vol. 3 (Calcutta: Asiatic Society of Bengal, 1869), 68–69 (ʿAbd al-Qadir Badayuni, *A History of India: Muntakh Abu-t-tawarikh*, trans. George Ranking, vol. 1 (New Delhi: Atlantic Publishers, 1990), 111–13).

after marriage, *abawayn* in this context had the same semantic content as *abawayn* in the chapter on marriage. Only the father and the grandfather could jointly decide to sell a child. Badayuni took this answer to Shaikh Mubarak, who had waited for this clarification, which reconfirmed the legitimacy of Shaikh Hatim's reasoning. Shaikh Bahaʾ al-Din, in turn, agreed that he put blind faith in the opinions of earlier jurists and failed to inquire in greater depth. He accepted Shaikh Hatim's penetrating analysis. The fact that works other than the *Fatawa ibrahimshahiyya* had excluded the legal opinion points to its unauthoritative nature.

Hanafi *fatawa* were a largely northern Indian phenomenon that was absent from much of the Deccan (southern India). The proliferation of successive compilations in Hindustan is a result of the close affinities between intellectual networks in Transoxania and Hindustan since the reign of the Khiljis (r. 1290–1320) and the Tughlaqs (1320–1413). There were three types of *fatawa* collections: (1) large compilations treating all aspects of law, such as *Fatawa tatarkhaniyya* and *Fatawa ibrahimshahiyya*; (2) manuals for personal use for sultans and princes, such as *Fiqh-i firuzshahi* and Muhammad b. ʿUthman b. ʿAli Sanjari's *Zubdat al-fiqh sikandarshahi* dedicated to Sikandar Shah Lodi (r. 1489–1517);[75] (3) and compilations made by non-court jurists for their own purposes, such as *Fatawa hammadiyya* and *Fatawa-yi barahna*.

Fatawa for personal use were composed in the sixteenth-century Mughal Empire though an imperial canonization was not undertaken until the 1660s. On Babur's (r. 1526–30) insistence, Nur al-Din b. Qutb al-Din b. Zain al-Din Khwafi composed *Fiqh-i babari* in Persian. In the introduction, Khwafi narrates the circumstances of his visit to Babur's court in 1519 while he was in the north-western parts of the subcontinent on his way to Mecca. Khwafi's great-grandfather,

[75] *Zubdat al-fiqh sikandarshahi*, MS Persian 2369, Khuda Bakhsh Library, Patna.

Shaikh Zain al-Din Khwafi (d. 1435). The Shaikh had established the Zainiyya offshoot of the Suhrawardiyya Sufi order in Herat and Khurasan; he maintained close connections with the Central Asian Timurids. Nur al-Din managed an audience with Babur, who was camping in Kabul.[76] The author compiled *Fiqh-i babari* by extracting legal opinions from seven works: *Al-Hidaya*, *Al-Kafi*, *Sharh al-wiqaya*, *Sharh mukhtasar al-wiqaya*, *Khizana*, *Khulasa*, and *Fatawa qadikhan*. A few decades later, Nasir al-Din Lahauri, better known by his pen name, Binaʾi, composed *Fatawa-yi barahna* in Persian.[77] Lahauri, who was a disciple of Akbar's court scholar, Makhdum al-Mulk Maulana ʿAbdallah Sultanpuri, reports that he assembled *Fatawa-yi barahna* and included the hagiographies of Abu Hanifa (d. 767), other Hanafi jurists and narrators (*rawi*) from the Middle East and Transoxiana. Lahauri composed his *fatawa* after he had a vision of Abu Hanifa in his dreams on wednesday, 13 rabiʿ al-thani 997 AH/1 March 1588.

In the historical development of *fatawa*, a shift can be noticed from primary to secondary ones. The earliest works are primary collections, which compiled *masaʾil* or "cases" in a question-and-answer format. The development of legal doctrine and their application in practice indicate that the *fatawa* genre underwent significant changes from the thirteenth century onwards. The origins of *fatawa* lay in the collection of legal responses issued by muftis. The gradual shift towards secondary collections represents two transformations. First, the collation of a mufti's *istiftaʾ* gave way to the production of a body of substantive law. Second, secondary collections cite extensively from non-*fatawa* sources of substantive law as well such as commentaries (*shuruh*). The compilers

[76] *Fiqh-i babari*, MS F. 54, Salarjung Museum, Hyderabad, fol. 3a.

[77] *Fatawa-yi barahna*, MS Fat. 4, Salarjung Museum, Hyderabad. For a description of the work's contents and the list of *ʿulamaʾ* cited, see Wladimir Ivanow, *Concise Descriptive Catalogue of the Persian Manuscripts in the Collection of the Asiatic Society of Bengal* (Calcutta: Asiatic Society of Bengal, 1924), 500–5. The lithographed version omits the *muqaddima* (prolegomena) of the text. See *Fatawa-yi barahna* (Kanpur: s. n., 1891).

attempted to clarify disagreements between jurists, to uphold established juridical positions, and to provide supplementary explanation for their arrangement in an order of hierarchical norms.

The Recanonization of Law and the Cycle of Juristic Renewal

The successive formations and iterations of *fatawa* in northern India portrayed above epitomize the open-ended framework of canonization in Islamic legal culture. *Fatawa* served several juridical purposes. In Badayuni's anecdote, the legal position on child sale in *Fatawa ibrahimshahiyya* was subjected to a further round of disagreement (*ikhtilaf*) in a new cycle of disputes. The anecdote demonstrates that the text offered a point of reference; however, it also established a potential precedent—non-binding in nature but nevertheless citable, in the resolution of a legal issue. The Mughal *'ulama'* rejection of this specific legal argument demonstrates that the aim of these collections was to provide a wide array of possible legal solutions. A jurist was free to choose any decision based on the application of interpretive categories. In practice, Mughal jurists chose another opinion while setting aside the unauthoritative opinion found in the *Fatawa ibrahimshahiyya*; they deemed it erroneous. How jurists chose what to include when they compiled *fatawa* was another matter. They present various disagreements (*ikhtilaf)*, which could complement, extend, restrict, or oppose one another. The collections include multiple legal positions that the compiler excerpted from different sources; rather than harmonize them, he presented excerpts that offered potential legal solutions. In this way, the collections preserve the memory of historical development in the Hanafi *madhhab*; they document the methods of canonizing, in a consolidated way, agreements, disagreements, and dissent from past juristic arguments.

The application and interpretation of *fatawa* had a further effect. On any legal matter, a

solution was found by choosing one among many opinions compiled in these works. *Fatawa* works are used as a point of reference, which offer a potential claim of established precedent that could help resolve a legal issue. Perhaps, the aim of the compilation was to exhaustively record all valid precedents one could assemble from authoritative texts. In practice, however, the position of the *fatawa* could be challenged by a mufti. The legal solution adopted only settled the legal problem for the time being; the solution did not end up becoming the norm that all jurists had to accept as established law. These differences arose because of a lack of consensus, especially since the position was unique and not corroborated in any other text. These collections, as a genre of substantive law, are a part of this "cycle of juristic renewal," a canonization process that remained open-ended. After all, *fiqh*, by nature, is an unending process of interpretation. Revelation alone is *ʿilm yaqin* (certain knowledge); and *fiqh* is fallible knowledge, which, as Baber Johansen notes, leads to "epistemological scepticism."[78] A *fatawa* compilation presents a snapshot of a dynamic system of law-making. Such collections both preserve the memory of historical developments in law and reflect the compiler's intention to include legal opinions from an array of available choices.

The canonization of the *madhhab* tradition in the form of multiple *fatawa*, available for consultation at any point of time, potentially gave rise to variant readings, additions, and omissions of legal opinions. The recurring process of revision by new compilations augmented the diversity of legal opinions rather than diminish them. Wael Hallaq shows that *tashhir*, *tarjih*, and *tashih* were the primary modes of argumentation.[79] One begins with a point of uncertainty about the law,

[78] Johansen, *Contingency*, 37.

[79] Hallaq, "From *Fatwās*," 51–2.

whose solution resolves the doubt. Ambiguity and uncertainty played an important part in juridical practice. Every solution is ultimately a possible and potential one the mufti chooses from within the disagreements (*ikhtilaf*) enumerated in the texts. [80] The mufti's answer is an intermediate step at find a legal solution, which does not exhaust the scope for further clarification.

Since the potential for disagreement always existed, what we may call "canonization without canonization" was the nodal point of *fatawa*. They served the purpose of presenting diverse legal perspectives; the day-to-day activities of applying law remained in the hands of the mufti's interpretation and the *qazi*'s decision-making. What role and meaning were attached to a textual precept on a given legal discussion in the application of law? How does the juxtaposition of legal precepts from diverse texts suggest the formulation of a juridical position that may be articulated by the reader? The jurists had a broad scope for interpretation. A restrictive conception of law would have presented an obstacle to the very purpose of producing *fatawa*, which included various legal opinions extracted from older texts. These ollections do not merely record earlier *fatawa*; they lay out a hierarchical set of norms derived from the works of earlier jurists. For instance, on the sovereign prerogative of allocating land grants to the *ʿulamaʾ*, *Al-fatawa al-ʿalamkiriyya* cites both Abu Yusuf's *Kitab al-kharaj* and *Fatawa Qazikhan*. While citing different legal interpretations on the exemption from *kharaj* on lands grants made to the scholars, Shaikh Nizam and other compilers ultimately uphold Abu Yusuf's position: "the *fatwa* is in accordance with Abu Yusuf's saying."[81] Further, the compilers add that it is the *imam*'s obligation to issue land assignments to the religious scholars. The compilers include a particular kind of benefice

[80] Walter E. Young, *The Dialectical Forge: Juridical Disputation and the Evolution of Islamic Law* (New York: Springer, 2017). Also see Chafik Chehata, "L'ikhtilaf et la conception musulmane du droit," in *L'ambivalence dans la culture Arabe*, ed. Jacques Berque and Jean-Paul Charnay (Paris: Anthropos, 1967), 258–66.

[81] Shaikh Nizam et al., *FA*, vol. 2, 219–22. Henceforth, we abbreviate the work as *FA* while citing it.

called *taswigh*, which had been prevalent in the Abbasid Empire.[82] *Taswigh* exempts beneficiaries from taxation on an annual basis; it can be renewed. In the early eighteenth century, the Mughal *qazi* of Thatta, Muhammad Aʿla b. Qazi Muhammad Hamid b. Muhammad Sabir Faruqi Thanawi cited this provision as mentioned from the *FA*. Based on the precedence for *taswigh*'s practice among the Abbasids and the legal opinions of earlier scholars, Thanawi argued that the *ʿulamaʾ* had the legitimate right to request these benefices from the Mughal State endowment (*bayt al-mal*).[83] Debates on an earlier fiscal practice from Islamic legal history could be resuscitated by reading *fatawa* collections, even though the *taswigh* benefice seems to have not had any real precedence in the Indian subcontinent. However, the terms and conditions of making different land grants were choices dependent on the *imam*'s prerogative; the Timurids did not issue such benefices.

Since the nineteenth century, codes and codifications have been enacted through statutes and legislation in South Asia. As positive law, codes enshrine rules and regulations without making place for juristic commentary. Law as the result of historical accumulation of juridical practices is occulted. In modern codes, the legal opinions of *fatawa* are nowhere discussed since codes are concerned with stating what the law is. However, *fatawa* present different legal opinions; in this genre, the jurist retains the autonomy to derive a legal solution rather than having to accept the law as already stated. For the reasons mentioned above, it is appropriate to conceive of these collections as both the source and the product of juridical practice. Assembling a collection is nothing short of re-canonization. In each work, the diversity of legal opinions within the *madhhab* are brought

[82] Claude Cahen, "L'évolution de l'iqtâʿ du IXe au XIIIe siècle : contribution à une histoire comparée des sociétés médiévales," *Annales. Economies, sociétés, civilisations* 8:1 (1953): 25–52, at 28.

[83] *Ahkam al-ʿaradi al-hind* by Muhammad Aʿla b. Qadi Muhammad Hamid b. Muhammad Sabir Faruqi Thanawi. MS Delhi Arabic 547, British Library. London, f. 6.

up to date. These attempts at re-canonization signal the major difference with modern codification projects, which update the laws without reference to the historical chain of legal transmission. When the collections are understood as a distinct genre of juridical texts, two aspects concerning law-making become clear. First, *fatawa* are one among many genres of composition prevalent in substantive law (*furuʿ al-fiqh*). For instance, they share common features with *sharh* (commentary) in the organization of different chapters and the arrangement of topics. As they evolved from primary to secondary ones, they became independent from the *masaʾil* format. Increasingly, these collections represented substantive law in an accessible form. They redacted portions from different legal texts and integrated them in a condensed format. Second, unlike modern law, which is often a direct effect of legislation or court systems, two central powers of state coercion, *fatawa* were the work of interpretation among jurists, even when rulers commissioned them. Sultans promulgated decrees on matters such as taxation where they chose to implement one among a variety of valid legal opinions. Based on their prerogative powers (*siyasa*), rulers could opt for other legal opinions, as needs dictated.

The methods of law-making in *fatawa* exhibit qualities that have little in common with the norms and methods of contemporary Islamic law. The latter are often products of a system of binding laws, as reflected in statutes, ordinances, and court judgments. In these collections, disagreements persisted and, indeed, jurisprudence as a system of knowledge thrived on disagreement. They were designed to compile and clarify disagreements among jurists of a particular *madhhab*. These compilations did not propose definitive resolutions of legal problems nor did they merely collect the opinions of school jurists. Disagreements did not settle once and for all the proper legal solution, nor did they guarantee the absolute validity of one over another.

In order to understand the status of Hanafi law in the Islamicate polities of Hindustan, we

must keep in mind four salient features. First, *fatawa* enumerate valid legal opinions by highlighting both juristic disagreements and consensus. Sometimes, they choose one legal opinion over another using phrases that indicate a preference-ordering: "the legal opinion on this matter" (*ʿalayhi al-fatwa*).[84] When consensus existed, they say, "amongst our esteemed masters" (*ashabuna*); or "we" (*nahnu*, *na*), as in, the jurists, collectively belonging to the *madhhab*, are in full agreement. These ways of specifying which legal opinions were correct and justifying the legal consensus among jurists also reflect the *ʿulamaʾ*'s self-esteem of as a community, which offered a human interpretation of God's law *(shariʿa)*. Second, Islamic law gave the learned jurists latitude to make decisions based on casuistic rather than dogmatic reasoning. While jurisprudence creates a hierarchy of legal norms, in practice, jurists retain the autonomy to offer a legal solution from their own reasoning.[85] Third, the principle of *ikhtilaf* allowed the possibility of multiple opinions to co-exist within a hierarchy of norms. [86] The accumulation of juristic debates increased diversity within the *madhhab*. Fourth, in practice, any mufti could issue a *fatwa* to compensate for the deficit in available legal options in order to find an adequate answer for practical purposes.

Al-fatawa al-ʿalamkiriyya, the Mughal imperial compilation, became the dominant reference work for Hanafi jurists within a few decades of its composition in the 1670s. Manuscript copies were sent out to learned scholars, Sufi masters, princes, and elite Muslim officers. The Padishah personally presented a copy to the Naqshbandi divine, 'Ubaid Allah during his stay in

[84] Joseph Schacht, "On the Title of the *Fatāwā al-ʿĀlamgīriyya*," in *Iran and Islam: In Memory of the Late Vladimir Minorsky*, ed. C. E. Bosworth (Edinburgh: Edinburgh University Press, 1971), 475–78.

[85] Johansen, *Contingency*, 55.

[86] Brannon M. Wheeler, "Identity in the Margins: Unpublished Hanafi Commentaries on the *Mukhtaṣar* of Ahmad b. Muhammad al-Quduri," *Islamic Law and Society* 10:2 (2003): 196. Also see Brannon M. Wheeler, *Applying the Canon in Islam: The Authorization and Maintenance of Interpretive Reasoning in Hanafi Scholarship* (Albany: State University of New York Press, 1996).

Delhi and requested his comments.[87] This was Timurid-style "book review" process. Mughal historians have often bemoaned that Aurangzeb ʿAlamgir prohibited the chronicling of his reign after the tenth year. We are fortunate he did not commission another bombastic imperial chronicle exalting his own glories. *Al-fatawa al-ʿalamkiriyya* was state exchequer's money well spent as this is where the empire's laws can be detected. Law is bound to statecraft; it tells us much more about the Mughal Empire than any chronicler has ever done. Hanafi law enjoyed a long afterlife. The production, transmission, and purpose of legal texts are intimately tied to the political ecology of Islamicate South Asia.

[87] Saiyid Athar Abbas Rizvi, *A History of Sufism in India*, vol. 2 (New Delhi: Munshiram Manoharlal, 1992), 490.

Chapter 2

The Legal Grammar of Timurid Property Regimes

> …this *Great Mogol* constitutes himself heir of all the *omrahs*, or lords, and likewise of the *manseb-dars*, or lower *omrahs*, who are in his pay; and, what is of the utmost importance, *all the lands of the kingdom are wholly owned by him*, excepting, perhaps, some houses and gardens which he sometimes permits his subjects to buy, share, or sell among themselves as they see it best.[88]

The Conceptual and the Historical Scaffolding of Mughal Property Norms:

Between the Past and the Present

In a famous letter to the *Roi-Soleil*, Louis XIV's minister and Controller-General of Finances, Jean-Baptiste Colbert (1619–1683), the French physician, François Bernier (1620–1688), who had spent several years at the ʿAlamgiri court, unknowingly ignited a debate on Mughal property regimes that has raged on as an intellectual and political wildfire for three centuries. Explaining the legal culture in the *Grand Mogol*'s domains to Colbert who knew little

[88] François Bernier, *Un libertin dans l'Inde moghole. Les voyages de François Bernier (1656-1669)* (Paris: Chandeigne, 2008), 201. My translation and emphasis added. See François Bernier. *Travels in the Mogul Empire, A.D. 1656-1668* (Oxford: Oxford University Press, 1916), 204. Half a century earlier, Thomas Roe (1581–1644) had made a slightly different argument saying, "No man hath proprietye in land nor goods, if hee [King] please to take it; soe that all are slaves." Cited in Sanjay Subrahmanyam, "Frank Submissions: The Company and the Mughals between Sir Thomas Roe and Sir William Norris," in *The Worlds of the East India Company*, eds. H. V. Bowen, Margarett Lincoln, and Nigel Rigby (Suffolk: The Boydell Press, 2006), 69.

about it, Bernier claimed "all the lands of the kingdom are wholly owned by [Aurangzeb ʿAlamgir]" (*toutes les terres du royaume sont en propre à lui*). The corollary of this argument was that Mughal subjects knew no form of "private property." They lacked the distinction between "mine and thine" (*le mien et le tien*), a criterion necessary for civic freedom. Bernier even cited a Persian proverb as proof that "orientals" themselves thought they were subject to an unchecked power regime: *na-hac kouta beter-ez hac deraz*[89] (*sic. na haqq-i kutah bihtar az haqq-i daraz*) that is, "speedy injustice is preferable to tardy justice." The fame of Bernier, and to varying degrees, the fate of Mughal historiography has been entangled with that famous letter. Did the Mughal subjects enjoy rights to private property? Certainly not in the modern "absolutist" sense of the term where an item belongs to only one private owner (property can have no more than one owner). However, until Bernier, no European commentator had invested intellectual efforts in such an inquiry about the Indian subcontinent, namely, the right to private property.[90] During Aurangzeb

[89] Bernier, *Un libertin*, 230 (Eng. trans., 236). Also see Sylvia Murr, "Le politique 'au Mogol' selon *Bernier* : appareil conceptuel, rhétorique stratégique, philosophie morale," *Purusartha* 13 (1990): 239–311. The other aspect of Bernier's property argument lay in the reconceptualization of the division of the earth according to different racial groups. See François Bernier, "Nouvelle Division de la Terre, par les differentes Especes ou Races d'hommes qui l'habitent, envoyée par un fameux Voyageur à M. l'Abbé de la ***, à peu prés en ces termes," *Journal des Sçavans* (24 avril 1684): 133–40. Also see Siep Stuurman, "François Bernier and the Invention of Racial Classification," *History Workshop Journal* 50 (2000): 1–21.

[90] This long history of European appreciation of the absence of private property includes, among others, thinkers like Montesquieu, Abraham Hyacinthe Anquetil-Duperron, Alexander Dow, and James Mill. See Montesquieu, *The Spirit of the Laws* (Cambridge: Cambridge University Press, 2002); Alexander Dow, *The History of Indostan, from the Death of Akbar, to the Complete Settlement of the Empire under Aurunzebe*, vol. 3 (London: John Murray, 1792); James Mill, *The History of British India*, vol. 2 (London: Baldwin, Cradock, and Joy, 1826). The matter was at the core of the colonial attempts at creating market relations in landed property in the Indian subcontinent. On Mill's history, see Javed Majeed, *Ungoverned Imaginings: James Mill's The History of British India and Orientalism* (Oxford: Clarendon Press, 1992). On the concept of despotism, see Franco Venturi, "Oriental Despotism," *Journal of the History of Ideas* 24 (1963): 133–42; R. Koebner, "Despot and Despotism: Vicissitudes of a Political Term," *Journal of the Warburg and Courtland Institutes* 14 (1951): 275–302; Joan Pau Rubiés, "Oriental Despotism and European Orientalism: Botero to Montesquieu," *Journal of Early Modern History* 9, nos. 1-2 (2005): 109–80; Alain Grosrichard, *Structure du sérail. La fiction du despotisme asiatique dans l'Occident classique* (Paris: Seuil, 1979). For the intellectual history of the period, see Duncan Kelly, *The Propriety of Liberty: Persons, Passions and Judgement in Modern Political Thought* (New Jersey: Princeton University Press, 2011). For one of the few theoretical reflections on despotism by South Asian historians, see D. D. Kosambi, "The Basis of Despotism," in D. D. Kosambi, *Combined Methods in Indology and Other Writings*, compiled, edited, and introduced by Brajadulal Chattopadhyaya (New Delhi: Oxford University Press, 2002), 797–801.

ʿAlamgir's reign, and, especially, later, Bernier's thinking had a profound impact on European perceptions of the Mughals. As freedom and private property are intimately tied to moral subjectivity, legal citizenship, and the constitutional state in European political thought since the early modern period, the absence of this logic in the Mughal world took on several reiterations in the eighteenth and nineteenth centuries. Montesquieu, who read Bernier's historical writings with a keen eye towards deriving the principles of "oriental" political organization from historical reality, depicted the Mughals, among other Islamicate empires, as despotic in nature. Moreover, there was another legal extension to the political analysis of Islamicate sovereignty. Unlike European power regimes, the Mughals allegedly had no "codes of law" that limited their power. "Religious laws," i.e., the Qurʾan, acted as the only place holder that checked despotic power. Since religious laws were not immanent and human but transcendent and divine in nature, there could hardly be any real control on despotic sovereignty.[91] Whatever the unconscious assumptions of the European Enlightenment's understanding of premodern societies in Europe and elsewhere as blindly following "religious laws," we have to ask another question ourselves, which forms a blind spot of our own modern consciousness. Why has no legal history of Mughal rule been written more than three centuries after Aurangzeb ʿAlamgir's death? What laws did his chancery, and the subjects follow; where did they originate, and on what grounds were they reasoned out? Or did they blindly follow a "rigid" *shariʿa* that South Asian historiography has often portrayed as not accommodative to other religions? And, if they did not follow any laws at all, did the Mughals build a vast empire within and beyond the lands of Hindustan through mere Timurid *diktat*? This

[91] For notable exceptions to this trend, see Abraham Hyacinthe Anquetil-Duperron, *Législation orientale* (Amsterdam: Marc Michel Rey, 1778); Nicolas Antoine Boulanger, *Recherches sur l'origine du despotisme orientale, suivi De la cruauté religieuse* (Paris: Coda, 2007).

is a logical loop that requires us to jump back to a world of law largely erased from Mughal historical analysis.

Mughal administrative history has long been written in the shadow of colonial discourse primarily focused on explaining landholding and land use of agrarian tracts. John Harington deduced that "the rents belong[ed] to the sovereign, and the land to the zemindar"—a theory of joint sovereignty between the landlord and the monarch akin to feudalism.[92] Joint sovereignty, which is the same as divided sovereignty between Aurangzeb ʿAlamgir and his *zamindar*s, has meant that land holding patterns have often been used as an *alibi* for explaining this shared basis of Mughal sovereignty and property order. Moreover, colonial historians were particularly fascinated by Aurangzeb ʿAlamgir's reign since they thought it was the "latest" Mughal settlement on whose basis the British had erected their own rule. As late as 1868, William Nassau Lees argued: "[t]he history of the reign of Aurangzeb is of singular importance for the British Government in India,…for in [Aurangzeb's] reign *the latest attempt was made to reorganize the Government and to re-settle the whole country*."[93] Lees was not entirely wrong even if his interests for the reign lay elsewhere in the more mundane realm of managing a colonial empire. In a similar vein, continuing with the colonial trend, historians have long debated the Mughal land settlement system and

[92] For Harington's analysis of the rights of landholders, see John H. Harington, *Extracts from Harington's Analysis of the Bengal Regulations* (Calcutta: Office of Superintendent Government Printing, Military Orphan Press, 1866), 45–53; 95–101. Also see Walter Kelly Firminger, ed., *The Fifth Report from the Select Committee of the House of Commons on the Affairs of the East India Company. Dated 28th July, 1812*, vol. 1 (Calcutta: R. Cambray, 1917), xxvi ff for an extended analysis of the Mughal *zamindari* based on colonial concepts. Even in the late nineteenth century, Charles Tupper, the Under Secretary to the Government of Punjab and a major figure in the compilation of Punjab customary laws still maintained this view. Charles Lewis Tupper, *Our Indian Protectorate: An Introduction to the Study of the Relations between the British Government and its Indian Feudatories*, vol. 1 (London: Longmans, Green, and Co., 1893), 162–3.

[93] W. Nassau Lees and H. W. Hammond, "Materials for the History of India for the Six Hundred Years of Mohammadan Rule previous to the Foundation of the British Indian Empire," *The Journal of the Royal Asiatic Society of Great Britain and Ireland* 3, no. 1 (1868): 464. Emphasis added.

revenue extraction mechanisms using *jama'* (revenue estimates) and *hasil* (actual revenue realization) figures.

Against this grain of thinking, Marxist historians understood the survival of the Mughal State structure as a reflection of a "mode of production" characterized by the land revenue settlement, the principal method of extracting revenue.[94] Though never explicitly theorized in the Mughal context, the "Asiatic mode of production," which itself had been largely invented to explain Russian and Ottoman societies in Marxian discourse, has exercised a considerable influence on the explanation of the Mughal State system. Indeed, the neo-Marxist critique of the "Asiatic mode of production," which gave way to the "tributary mode of production" that maintained a safe distance between a generic Asiatic mode and European feudalism, has had little effect on Mughal historiography.[95] Historians of the colonial period too have only cursorily examined the theoretical difficulties of describing the precolonial past; their critique has been limited to rejecting British "orientalist" ideas in so far as they served framing the colonial narrative

[94] For a classic study of Mughal fiscal mechanisms and the agrarian economy, see Irfan Habib, *The Agrarian*. For the introduction of the Mughal revenue system and the shortfall in *jagir*s in the Deccan in the late seventeenth century, see John F. Richards, *Mughal Administration in Golconda* (Oxford: Clarendon Press, 1975). For an analysis of property regimes in other regions through different approaches, see Dharma Kumar, "Private Property in Asia? The Case of Medieval South India," *Comparative Studies in Society and History* 27, no. 2 (1985): 340–66; André Wink, *Land and Sovereignty in India: Agrarian Society and Politics under the Eighteenth-Century Maratha Svarājya* (Cambridge: Cambridge University Press, 1986). For a synthesis on the colonial context, see David A. Washbrook, "Law, State and Agrarian Society in Colonial India," *Modern Asian Studies* 15, no.3 (1981): 649–721.

[95] For an early version, see Robert Patton, *Principles of Asiatic Monarchies, Politically and Historically Investigated, and Contrasted with Those of the Monarchies of Europe: Shewing the Dangerous Tendency of Confounding Them in the Administration of the Affairs of India: With an Attempt to Trace the Difference to its Source* (London: J. Debrett, 1801). For the application of the hydraulic theory of public investment to despotic empires, see Karl A. Wittfogel, *Oriental Despotism: A Comparative Study of Total Power* (New Haven: Yale University Press, 1967). Also see Perry Anderson, *Lineages of the Absolutist State* (London: Verso, 1979), 462–549. For a historical analysis based on this approach, see John F. Haldon, *The State and the Tributary Mode of Production* (London: Verso, 1993). Unlike Indian history before Islamicate rule where there was debate on a feudalism, Marxist historiography on the Mughal Empire failed to generate a theoretical reflection on how to classify this system, either based on Islamic law or taking a cue from Iranian models. For a brief critique of Mughal Marxist historiography, see Dipesh Chakrabarty, "Marxist Perception of Indian History," *Economic and Political Weekly* 31, no. 28 (1996): 1838–840.

of "decline," "despotism," and "decadence." Even postcolonial scholarship has evaded the processes that generated change under early company rule, which were products of the continuation of many precolonial notions, institutions, and patterns of political and social organization. Ranajit Guha rather transposes a generic "idiom of Danda" that was allegedly "central to all indigenous notions of dominance," without explaining its historical genealogy in the precolonial past.[96] Postcolonial theory has therefore largely remained aloof to precolonial historical conditions of exercising sovereignty, dominion, and dominance.

An even more perplexing scenario persists today. Despite a long history of Sultanates, which exercised varying degrees of rulership in most parts of the Indian subcontinent over centuries (c. 1100s–c. 1800s), no question has been so far asked about Islamic legal procedures, their impact, and application, be it for the Mughals, or, their predecessors. This is astonishing, especially, when many Sultans in Hindustan ordered illustrious recanonizations of Hanafi jurisprudence—the school of Sunni legal thought they all adhered to and practiced, and, of which *Al-fatawa al-ʿalamkiriyya* was to be the last of the great premodern iterations. Compiling and commissioning *fatawa* were certainly acts of ritual piety that honored the long tradition of human interpretation of God's law (*shariʿa*) in jurisprudence (*fiqh*). They were as much intended for use, transmission, and legal application, especially at the imperial courts where chanceries framed administrative orders and rules keeping in mind the logic of property as well as contractual norms. Bringing back the State, one of the central institutions in history into discussions, unlike recent

[96] Ranajit Guha, *Dominance without Hegemony: History and Power in Colonial India* (Cambridge, Massachusetts: Harvard University Press, 1998), 1–99. Also see Bernard Cohn, *Colonialism and Forms of Knowledge: The British in India* (Princeton, New Jersey: Princeton University Press, 1996).

social and cultural turns in historiography that have neglected it, we seek a three-pronged redefinition of the Mughal State at the intersection of politics and law:

(i) the Mughal State as a legal regime;

(ii) the Mughal State as simultaneously the producer and the guarantor of property, ownership, and contractual claims;

(ii) law as written law with sources in Hanafi jurisprudence and not customary practices of unknown origins.

These three features go against the grain of the dominant narrative prevalent since late colonial rule that the region was primarily governed by customary practices. The legal nature of Islamicate rule has slipped under our feet not because it was hidden. In plain sight, the role of Hanafi jurisprudence has been occulted in the historical writings of the last two centuries.

If it were possible for the historian to interview Aurangzeb ʿAlamgir—though he would be enraged at any such a daring enterprise of questioning a Padishah, he would have been dumbfounded to hear claims of the Harrington style rentier of Hindustan or Bernier's maximalist ownership over every acre of land therein. Aurangzeb ʿAlamgir laid another kind of claim called *saltanat*. What did he think, or, rather, how did the *ʿulamaʾ* explain it to him, since they indeed did so in the *FA*. On an elementary matter such as agrarian produce, the crop (*ghalla*) jointly belongs to the Sultan and the peasant; the peasant is obliged to partake the Sultan's share even before he consumes (literally, eat) it.[97] This is neither divided sovereignty nor shared property. Only the

[97] Nizam et al., *FA*, vol. 2, 225.

produce from the sole productive sphere, i.e., land—an idea not unlike what the Physiocrats believed, jointly belongs to the two parties. The internal assumption of the Muslim jurists' arguments for a joint share of produce is a rationale that an abstract unwritten *ʿaqd* (contract) exists between the Sultan and the peasant. The Sultan guarantees security in return for his claim to the produce. In Mughal territories, no allodial rights to agrarian land existed. The *bayt al-mal* (public fund) legally and nominally owned them, a point to which we will come in a bit. For Mughals, like other Islamicate political cultures of the period, land was the primary source of revenue. The meticulous manner in which land was conquered, settled, distributed as *iqtaʿs* (concessions or fiefs) among the officers or held as domain land for the personal expenditures of the ruler, exhibit characteristics of diverse legal features attached to types of land holdings.[98] Indeed, in Islamic law, jurists had provided considerable attention to the manner in which land had to be managed, held, and disbursed for the sake of perpetuating sovereign authority whereas commerce, considered an "unproductive" sphere (like the physiocrats) of wealth circulation, was recognized as an economic activity best kept outside political control. Trade had to be ideally left free without burdening it with too many imposts; it was taxable but to a minimum. Aurangzeb ʿAlamgir not only abolished many uncanonical commercial taxes, but he also explicitly prohibited princes from investing in private trade (*sauda-yi khass*) since political power could be abused to make private gains to the detriment of merchants. Especially, he warned his grandson, Muhammad ʿAzim al-Shan, the governor of Bengal, Bihar, and Orissa that the enormous wealth he accumulated in coastal trade

[98] Ann K. S. Lambton, "The Evolution of the Iqṭāʿ in Medieval Iran," *Iran* 5 (1967): 41–50. Also see Claude Cahen, "L'évolution."

was illegal.[99] Commerce (*tijarat*) was outside the ambits of *saltanat* though a different kind of transactional-financial nexus was at play in *saltanat* as we will see later.

These Islamic legal norms on property claims and Mughal forms of applying them to a diverse system of property structures in South Asia remain unanalyzed even today. A tension existed between the normative ideals and the practical realities. The latter did not always translate the former in actual decision-making while there were multiple ideals from which the Mughals could choose. I argue that this tension, rather than weakening Mughal institutions, was a productive force in the formation of Mughal legal normativism and proceduralism.

On the vexed question of property rights in precolonial South Asia, any attempt at proving the existence of private property as we understand it today is a meaningless affair. Returning full circle, the central argument of this chapter rests, instead, on articulating the kind of property claims elite Mughal subjects made in the seventeenth century. I address the legal procedures through which the Padishah and his chancery granted and respected (or not, at times) different property claims. Further, I analyze the legal justification that grounded these grants and claims. The explanation of Mughal property regimes goes hand in hand with its ideals of sovereignty. The *imam* settled claims, arbitered conflicts and disputes that arose but also prepared the legal terrain through the appointment of *qazi*s. We have to disaggregate these elements in actions and understand them within the intertwined relation between Persianate administrative models, Timurid ideals of rulership, Chinggisid customs, Islamic legal mechanisms as practiced in the subcontinent carrying on from the Sultanate period, and customary practices that varied across the

[99] Saiyid Athar Abbas Rizvi, *A Socio-intellectual History of Isnā' Asharī Shī'īs in India (16th to 19th century A.D.)*, vol. 1 (New Delhi: Munshiram Manoharlal, 1986), 46.

region. Simply put, the central themes of this chapter are the following: What conceptual tools did Aurangzeb ʿAlamgir and his imperial court have when they decided property claims? What norms did they think they were practicing and how did they apply them?

For resolving these problems inherited from South Asian historiography, we need to analytically address the Islamic concept of dominion in general, and the Hanafi classification of property forms and contractual obligations through which the Mughals exercised their sovereignty. Aurangzeb ʿAlamgir executed the property, wealth, and finances of the Sultanate *as* its trustee. This idea of trusteeship is present in one of the many terms used to describe the ruler in Islamic culture, *vali*, a trustee exercising jurisdiction. The Padishah maintained the total assets of the Sultanate (including land within his realms) in trusteeship bestowed to him in virtue of the office he occupied (as Sultan and *imam* at once) and under no circumstances as personal property. This was the *bayt al-mal* (public fund, literally, "house of wealth"), which was more than a mere imperial treasury chest. Rather, the *bayt al-mal* was the public fund of assets and hoarded wealth as well as the revenue flows that financed capital and current expenditures divided across various functions of statecraft.[100] The term *mal* (good) itself had a wide connotation meaning goods, wealth, assets, capital, investments, specie, and bullion, etc. Land too was owned by the *bayt al-mal*; normatively all of earth belonged to God. This did not mean God was the proprietor as the British thought nor could he be party to human actions such as contractual obligations. The Padishah promised sovereign guarantees for land transfers. In the Mughal system, the land transfers (*intiqal*) granted possessionary claims with the right to the acquisition of revenue

[100] For the juristic definition and the composition of the *bayt al-mal*, see Nicolas P. Aghnides, *Mohammedan Theories of Finance (with an Introduction to Mohammedan Law and a Bibliography)* (New York: Columbia University Press, 1916), 423–38.

proceeds (*istighlal*). These transfers did not convert lands into "perpetual and inalienable property," a notion that constitutes full property rights in the modern sense of the term. Even *altamgha* grants given in perpetuity were always revocable by the reigning Sultan. None of this need to surprise us given that the doctrines of possession and usufruct had been the cornerstone of landed property in Islamic law. In the Mughal case, it is simply because the role of Islamic law has been completely occulted and very often reasoned through English common law applicable today in the subcontinent—as we will see below, that legal paradoxes and inconsistencies of historical interpretation have appeared for which the Mughals were in no way responsible.

Concepts of Property, Ownership, and Contractual Obligations in State Administration

Timurid public power was run according to Islamic legal principles of property (*mal*) and contractual obligations (*ʿuqud*, sing. *ʿaqd*). In Islamic law, *mal* is divided into several categories. It is either *mithliyyat* (fungible) or *qimiyyat* (non-fungible) in nature. It can be *manqulat* (movable) or *ʿaqar* (immovable).[101] Several differences in interpretation exist between the Sunni schools of legal thought, which are not negligible from the perspective of our study. Unlike other schools, the Hanafis do not regard usufruct to be *mal*, which has to be tangible, possessable and preservable in nature.[102] The Hanafis recognize land alone as immovable in nature and not the buildings, trees, and other constructed edifices unless they are explicitly sold attached to the land (for instance, one could sell a building without selling its foundation that belongs to the immovable property of land).

[101] For a general overview of various types of property, their definition, and classification in Islamic law, see Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1982), 134–43. Also see Chafik Chehata, *Études de droit musulman*, 2 vols. (Paris: Presses universitaires de France, 1971–3); Muhammad Wohidul Islam, "Al-Mal: The Concept of Property in Islamic Legal Thought," *Arab Law Quarterly* 14, no. 4 (1999): 361–8.

[102] Frank E. Vogel and Samuel L. Hayes, III, *Islamic Law and Finance: Religion, Risk, and Return* (The Hague: Kluwer Law International, 1998), 94–5.

Moreover, in juristic discourse, one's property pertains to both *ʿayn* (substance) as well as *dayn* (claim/obligation). All kinds of *mal* such as coins, bullion, land, grain, buildings, canals, roads, etc., are classified as *ʿayn* (substance). However, one's property included credit given to another party. For the Mughals, this conception was crucial as property represented both one's assets of ownable physical objects such as land, buildings, books, etc., but also credit. Credit was *dayn* (claim/obligation) in the form of financial and fiduciary loans, advances, and annuities such as *mutalaba*, *musaʿadat*, *dast gardan*. Equally, lands loaned to the *ʿulamaʾ* as *madad-i maʿash* in the form of gratuitous loans (*ʿariya*) were obligations (*dayn*) too. Property concerned physical entities as much as the contractual demands one could make upon others.

The Mughal imperial chancery operated with all these types of property and contractual obligations issued in the name of the Padishah himself as the contracting party. Hence, legal titles were distributed in his name: this was the legal translation that mirrored the personal apparatus of politico-militaristic power (*shawqa*) with which he ruled. As we will see throughout, Aurangzeb ʿAlamgir's authority, combined with his political force, was construed within the ambits of his legal authority. The latter was bestowed to him as *imam*, who contracted and loaned the *bayt al-mal*'s assets to officers and subjects. He was not only expected to contract with his subjects but also enforce the application of contracts between his subjects; he was, above all, the enforcer-in-chief of all contracts and their ultimate arbiter and guarantor in the Mughal realms. This dialectical triad synthesized Timurid legal authority and political order as much as the *imam*'s own responsibilities and obligations to his subjects due to an abstract pact of governance (*ʿaqd*). The enforcement of this responsibility was reflected in ethical effects (*akhlaq*) it had for himself as a man bound to law as much as his subjects who became law-abiding. Ultimately, his earthly power was bound to the rule of God. Hence, very often the rulers were called *ʿabd Allah sultanuhu* (the

slave of God, his Sultan). Under all conditions, he was expected to operate within these religious, legal, and ethical limits imposed upon his governance.

Paralleling the concept of property (*mal*) stood the contractual norms, more specifically, the "laws of obligations."[103] They rendered possible all types of transactions in order to create, transfer, exchange, distribute, and adjudicate property. Property emerges not only in the possession of assets and commodities but equally in the contracts that produce claims and counterclaims to one another's property. The Mughal grant of legal titles to their subjects were contractual agreements.

All imperial charters (*farman*) creating proprietary or usufructuary claims fall under the following four categories of contractual obligations:[104]

i. *bayʿ* (sale): transfer of the corpus for a consideration (*tamlik ʿayn bi-ʿiwad*)
   the sale of *milk* (ownable) land and all other day-to-day commercial transactions, sales, barter, exchange and swapping of lands or assets, and other market relations
ii. *hiba* (gift): transfer of the corpus without a consideration (*tamlik ʿayn bi-la ʿiwad*)
   personal gifts given as a favor without anything in return such as land gifts to the officers
iii. *ijara* (lease): transfer of the usufruct for a consideration (*tamlik manfaʿa bi-ʿiwad*)

[103] For an excellent and succinct introduction, see Subhi Mahmasani, "Transactions in the Sharīʿa," in *Law in the Middle East*, vol. 1, *Origin and Development of Islamic Law*, eds. Majid Khadduri and Herbert J. Liebesny (Washington D.C.: The Middle East Institute, 1955), 179–202. For the different kinds of obligations and their legal conditions, see Schacht, *An Introduction*, 144–50.

[104] I am borrowing the classification from Hussein Hassan, "The Promissory Theory of Contracts in Islamic Law," *Yearbook of Islamic and Middle Eastern Law* 8 (2001-2002): 285. Over the course of the dissertation, I will explain how the Mughals practiced these contractual forms and the social and economic consequences they had.

lease holding of lands for usufruct for a stipulated period of three years, the hiring of labor for the military market, lease holding for commercial crops, etc.

iv. *ʿariya* (gratuitous loan): transfer of the usufruct without a consideration (*tamlik manfaʿa bi-la ʿiwad*)

gratuitous loan of land made to religious establishments known commonly as *madad-i maʿash*

In Islamic law, the idea of contract is generalized from the concept of *bayʿ* (sale). All other contracts are analogically derived from the sale contract. In this context, *bayʿ* is not restricted to the alienation of property for money, that is, the sale as we understand it today. *Bayʿ* is a broader concept of exchanging two commodities of equal value, whether through money, barter, or swapping of two different types of commodities. That is, it is closer to the idea of "exchange" in modern political economy. This conception of *bayʿ* is the same as the Aristotelian idea of a synallagmatic contract, in which each contracting party is bound to give something in return. As we will see, the Mughals often swapped lands with their subjects; they were technically a sales contract. This was especially the case with the land adjoining the Yamuna in Agra that belonged to the Kacchawaha Rajputs. They received *haveli*s in return for ceding their claims to Shah Jahan who built a tomb for his late wife, Arjumand Banu Begum *aka* Mumtaz Mahal. The Taj Mahal was built on lands the Timurids had exchanged.

Moreover, all the four types of contracts were in use. They exhibit several overlapping and divergent legal characteristics, which are essential for understanding Mughal contractual behavior. Both *bayʿ* (sale) and *ijara* (lease) are synallagmatic contracts: each party is bound to provide something in return to the other in a reciprocal exchange (*bi-ʿiwad*: with consideration). In a sale, two goods are exchanged for each other (both goods and commodity money count as *mal*, so

money can be one of the goods). In a lease, a money rent (pecuniary compensation) is exchanged against the right to usufruct. *Hiba* (gift) and *ʿariya* (loan), however, are gratuitous in nature: one party offers something without receiving anything in return from the other party (*bi-la ʿiwad*: without consideration). In both cases, the possession of the property is alienated to the other party. A gift gives the ownership of the property whereas a loan gives the possession of the property for the purpose of its usufruct without ceding its ownership.

These four contracts can be reasoned in another way too. Sale and gift concern *tamlik ʿayn*, literally, the ownership of the substance, that is, the property is alienated to the receiving party who becomes its owner. The term *hiba* (gift) also extends to bequests made in favor of someone. For instance, when the Rajputs asked to purchase ten *bigha*s of land in Shahjahanabad to extend their gardens in 1660, Aurangzeb ʿAlamgir was pleased to give them the land as a gift without anything in return. Lease and loan are limited to the enjoyment of the ownership of usufruct (*tamlik manfaʿa*). The possession of the property is transferred without alienating the ownership of its substance (*ʿayn*).[105] For instance, *madad-i maʿash* was a loan of land (*ʿariya* as the Mughal *farman*s stipulated them) belonging to the Mughal public fund given to the religious groups. They did not become owners of the land but enjoyed its fruits. Whether they tilled it themselves or sub-contracted it to the peasants, they were the owners of the usufruct, the crop, and not the land. The Mughal *farman*s only requested the grantees to pray for the perpetuation of their rule in return; however, prayers were not a commodity since they had no exchange value or price (*qima*/*qimat*).

[105] The philosophical and conceptual issues in Islamic legal thought can be found in the classic article, Robert Brunschvig, "Corps certain et chose de genre dans l'obligation en droit musulman," *Studia Islamica* 29 (1969): 83–102. Here, I will not enter into the legal-technical aspects of ownership, possession, usufruct, and substance, though they are extremely important for how we understand the legal solutions that the Mughal administration found to settle claims. In Chapter 7, I will show how these legal solutions had major consequences for the way the Mughal chancery settled legal possession of *madad-i maʿash* lands.

Still another kind of legal reasoning is possible between unilateral and bilateral contracts. Gift and loan are unilateral contracts since one party gives something with no return from the other. Such contracts are done unilaterally. When *madad-i maʿash* grants were issued through a *farman*, they represented a promissory note to the grantee whose consent was implicit. However, sale and lease are bilateral contracts, where both parties have to agree to an exchange. In these cases, the vendor/lessor proposes, the buyer/lessee accepts the *qabul* (proposition) and signs the contractual agreement. In the case of sales, contracts were known as *baiʿnama* (sale deed) and, in the case of lease holdings, *qabuliyat* (acceptance deed). When a local *divan* was signing an *ijara* contract, he was doing so at the behest of the Mughals. When examined under the Hanafi doctrine of contractual obligations, all paradoxes of arbitrary rule attributed to Aurangzeb ʿAlamgir fall out of place. He did not violate the principles of the laws of obligations but upheld them. Modern historiography has not taken into account these elementary aspects of the Mughal contractual regime. In all these aspects, the Mughal household was not merely a revenue-extracting fiscal institution; it was equally the largest financial household in the subcontinent's political economy (the way even governments are today) as much as a party entering into contracts with its subjects. All these complex legal mechanisms played their part in the contractual regime that the Mughal chancery guaranteed.

The legal life of the Mughal household based as it was on Islamic, Persianate, Chinggisid, and Timurid practices that were contractual and non-contractual in nature, did not permit "absolute and inalienable property rights" but "relative property claims" of subjects, which were always open to future modifications. For us, who are attuned to a post-Lockean conception of property rights,

the ownership of a thing (*res*) *qua* thing is self-evident,[106] and, it is certainly difficult to envisage a world of complex property claims derived from the sovereign prerogative to disburse "conquered" lands as normatively maintained in Islamic legal principles. For us, ownership belongs to oneself in an inalienable manner; it can be alienated by one's will through contracts. Real property in English common law as used in the subcontinent today originates in the "labor theory of property" wherein the mixing of human labor to nature creates the rights of ownership to the person who expended her labor. It becomes an inalienable part of her personality. Alongside, the "will theory" of the formation of rights guarantees that this reality of owning one's property is recognized, subjectively by the self as its own and objectively by law (and the State as in which the law finds its origins).[107] For us, individual personality is tied to a bundle of goods that are inalienable outside of voluntary commerce or exchange, constitutive of personality guaranteed by the legal order of the modern state. To attempt understanding the Mughal legal world from our conceptual-social world of law is not only anachronistic but absurd that can leave behind odd and unexplainable results we cannot square. For instance, land was a unique form of property given its intrinsic needs in an agrarian society. In the Hanafi interpretation of Islamic law, land alone qualifies as an immovable asset (*ʿaqar*) while any built-up area and additions thereof, including buildings, religious edifices, walls, canals, roads, and even gardens and planted trees, are deemed movable assets. As we will see below, this conception gave the Mughal chancery a far-reaching prerogative to approve imperial privileges of land grants as well as decide the nature of usufruct,

[106] See John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1988).

[107] We are dealing with the theoretical and philosophical analysis and not the historical formation of property rights and laws. For the elaboration of the labor theory of property, see Locke, *Two Treatises*, 285–302. For the definition of real property and its distinction from personal property, see William Blackstone, *Commentaries on the Laws of England in Four Books*, vol. 1 (Philadelphia: J. P. Lippincott, 1893), 313–4. Also see Jeremy Waldron, *The Right to Private Property* (New York: Oxford University Press, 1989).

i.e., land use patterns. Such a fundamental and foundational idea of Islamic law has not at all been evoked in Mughal historiography. Since we are not dealing with a legal regime based on English "real property" law outlined earlier, a market existed only for land demarcated for *tamlik*, which meant "ownership" as much as "possession." In that case alone, subjects bought and sold the land under the legal norm of "transfer" (*intiqal*) through a sale contract.

In Islamic law, the concept of property is separate from ownership. Wael Hallaq notes defined as "the legal relationships between persons and property insofar as rights are concerned" and adds "[t]he jurists moreover assert that when the term "ownership" (*milk*) is used without qualification, the default referent is complete ownership, which must include the rights to usufruct."[108] In the Mughal context, *tamilk* lands were few and far in between in mostly urban areas. In the *muhalla*, ownership was complete (*tamm*) for individuals in the land and the built-up area; they were therefore *milk*. In *purajat* and agrarian lands, it was incomplete (*naqis*/ *daʿif*) with only usufruct and not ownership of the substance that belonged to the *bayt al-mal*. In *sarkar-i muʿalla*, land ownership was complete with both substance and usufruct belonging entirely to the *bayt al-mal*—though here ownership of usufruct could be ceded for the period of residence making it incomplete in the interim.

Let us also not forget that in premodern South Asia, neither Islamic nor Brahminical legal systems were doctrines based on the theory of rights; they were embedded in the doctrine of obligations.[109] Today, the term *huquq* (sg. *haqq*) has a far wider meaning to include the European

[108] Wael B. Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 299.

[109] For a critical analysis of claims in premodern Hindu law, see Donald R. Davis, "Centres of Law: Duties, Rights, and Jurisdictional Pluralism in Medieval India," in *Legalism: Anthropology and History*, eds. Paul Dresch and Hannah Skoda (Oxford: Oxford University Press, 2012), 85–113; John Duncan Martin Derrett, "The Development of the Concept of Property in India c. A.D. 800-1800," *Zeitschrift für Vergleichende Rechtswissenschaft* 64 (1962): 15–130.

equivalent, "rights." This is a product of modern translation effects through which new forms of property regimes that emerged in colonial period were absorbed into existing terms. *Huquq* in premodern Islamic thought had a far more limited semantic content contained by the kinds of legal needs that arose in those societies. *Huquq* were "claim rights" and not "abstract rights." Joseph Lowry succinctly expresses the doctrine behind this definition:

> Since the *ḥuqūq* are viewed primarily as claims that, if proved, lead to the restoration of something, they do not fit easily within the "will theory of rights," according to which an individual's rights carve out a sphere of choices and freedom of action. It may be that they accord better with an interest or benefit theory, in which rights further the interests of, or benefit, their holders—for example, by restoring a claimant, after a wrong, to the previous status quo, but even this is difficult to decide with certainty.[110]

Therefore, *huquq* were not "justiciable" rights as we know them today but only rights that guaranteed the making and unmaking of claims based on interests of holding land for usufruct. These delimitations are far more restrictive in nature than the expansive scope of modern-day legal discourse. Different kind of subjects had different claims. They had to be negotiated, extended, or revoked, depending on their status and the purpose for which property claims had been given. For our present purposes, I leave suspended the effects that notions of property embedded in Brahminical legal discourse (*dharmasastra*) and customary practices had in parts of the Mughal Empire. Even though they had continued relevance to varying degrees when parties were upper-

[110] For the nature of rights in Islamic legal discourse and their circumscribed character, see Joseph E. Lowry, "Rights," in *The Princeton Encyclopedia of Islamic Political Thought*, ed. Gerhard Bowering (Princeton: Princeton University Press, 2013), 474–8.

caste groups (*jati*) or in localized zones of Rajput *vatan jagir*, Timurid statecraft itself did not depend on them for the normative construction of its properties and contracts.

The further difficulty that presents is the normative character of property definition in Islamic jurisprudence,[111] the historical experience in various Islamicate cultures, the Persian militaristic models,[112] and the regional varieties of customary practices in the Indian subcontinent,[113] and our own vocabulary saturated with European modes of thinking property and the historical distance from which we have to see a system that is non-existent that make any assessment of Mughal legal understanding of property and its functioning a potent concoction for confusion, to say the least. The conversion of, say, land from *ʿushr* (tithe) to *kharaj* (land tax up to a ceiling of 50 percent of total produce) for tax purposes, the change of *khalisa* (domain land) to *tamlik* (ownership) and vice-versa, fixed short-term lease holding contracts called *ijara* contracted between the Mughal chancery and the subjects (either individually or in partnership) at imperial, provincial and local levels, were all eminent matters originating in Hanafi legal doctrine and subject to its conditions. Different logics of property holdings, fiscal adjustments, and individual claims to wealth were collectively at play, none of which can be reduced to mere "Mughal policy"

[111] See A. N. Poliak, "Classification of Lands in the Islamic Law and Its Technical Terms," *The American Journal of Semitic Languages and Literatures* 57, no. 1 (1940): 50–62; A. N. Poliak, "Some Notes on the Feudal System of the Mamlūks," *Journal of the Royal Asiatic Society of Great Britain and Ireland* 69, no. 1 (1937): 97–107; Frede Løkkegaard, *Islamic Taxation in the Classical Period: With Special References to Circumstances in Iraq* (Copenhagen: Branner & Korch, 1950). Also see Nimrod Hurvitz, "Law and Historiography: Legal Typology of Lands and the Arab Conquests," in *The Law Applied: Contextualizing the Islamic Shariʿa*, eds. Peri Bearman, Wolfhart Heinrichs, and Bernard G. Weiss (London: I.B. Tauris, 2008), 360–73.

[112] Ann K. S. Lambton, *Landlord and Peasant in Persia: A Study of Land Tenure and Land Revenue Administration* (Oxford: Oxford University Press, 1953).

[113] See B. R. Grover, "The Nature of Land-Rights in Mughal India," *Indian Economic and Social History Review* 1 no. 2 (1963): 1–23; Irfan Habib, "The Social Distribution of Landed Property in Pre-British India: A Historical Survey," in *Essays in Indian History: Towards a Marxist Perception* (New Delhi: Tulika, 1998), 59–108.

but were part of different ways of imposing law and negotiating financial transactions as part of the political practices.

The Classification of Mughal Property Holdings

From the Mughal imperial chancery's perspective—considering the norms of Islamic law in a succinct manner, the different forms in which the totality of cleared land was controlled can be classified under the following formal categories. These politico-legal ideal types coincide with actual practices excluding exceptions and sub-variants. The classification below is notwithstanding alternative modes of conceiving "property" that persisted among South Asian communities, products of other historical factors or prevalent beliefs and customary laws of lower tier groups such as *zamindar*s, peasants, and merchants.

AGRARIAN TRACTS

1. ***Khalisa-yi sharifa*** or domain land belonging to the Mughal State with exclusive rights, prerogatives, and claims. *Khalisa* could be of three types:

a. permanent: proper domain land for financing the institutional expenditure. Revenue was collected directly from the peasants who tilled the land or revenue collection rights given away through *ijara* (lease holding) contracts for a maximum three-year period stipulated under Islamic law in return for a lumpsum payment or annuities by the lessee, known as *ijaradar* (legal term, *musta'jir*).

b. personal domains (*khalisa-yi khassa*): for financing the Padishah's personal expenses.

c. temporary: *pai baqi* (land set aside for allocation of *jagir* but not yet issued) as well as

allocated *jagir* land that was confiscated and brought under direct Mughal imperial control for want of financial surety or non-compliance of imperial orders amongst the *jagirdar*s. The Sultan had absolute rights of usufruct throughout the period of temporary control; he could also contract them in the form of *ijara* lease holdings.

e.g., parts of the Mewar Rajput's *jagir*s were taken over in the 1680s due to non-compliance and released back only upon agreement to imperial terms and conditions.

2. ***iqta'*:** assignments of land to officers for purposes of usufruct; commonly called *jagir* (Persian) or *tuyul* (Turkic)

   condition: can be granted as *ijara* further down the hierarchy with the Padishah's permission. The Mughal imperial administration largely practiced a policy of non-interference but maintained surveillance to check any excesses and trouble through policing. *Suba* and *sarkar* level officers maintained vigilance over *jagir*s falling within their jurisdictions; news reporters reported directly to the Padishah on conflicts and skirmishes.

1. ***altamgha*:** a hereditary grant creating a quasi-permanent property claim transferable to descendants. In practice, it required reapproval from the new Sultan upon accession or the demise of the current holder. Claims were reapproved when there was a change of either party. Any later Padishah retains full prerogative in his position as *imam* to annul or modify the grant as he may wish to.

2. ***zabti*:** personal grant

   condition: lapses upon death; non-transferable to descendants

3. ***mashrut*:** a conditional grant in lieu of a service rendered; a *quid pro quo* that created no claims.

   e.g., Jahangir calls this grant *tankhva jagir* (salary assignment) in his memoirs.[114]

3. feudatory regimes (*vatan jagir*): The Mughals made agreements with pre-existing regional groups recognizing them as feudatories who paid tribute. They were left to govern their ancestral lands in a semi-autonomous manner; some of them were allocated *jagir*s elsewhere to supplement their incomes for state services rendered to the Mughals.

   e.g., Rajput *raja*s treated as *umara'*, certain autonomous *zamindar*s like Sirmur rulers, the chieftains of Little Tibet (Ladakh), who paid tributes, fall into this category.

4. *madad-i ma'ash*, *a'imma*, or *suyurghal*: a grant of a tract of fallow but cultivable land made primarily for religious purposes such as incomes for the *'ulama'* and Muslim saints free of benefit (*farman*s explicitly ask them to pray for the perpetuation of the Sultan's rule); *qazi*s for their legal services; and in lieu of endowment (*waqf*) to mosques, *khanqah*, *dargah*, *mutt*, temples, and sectarian orders.

   condition: In Islamic legal terms, this is an interest-free loan (*'ariya*, literally, a right to partake in the benefits) contracted between the two parties, the Sultan and the grantee. Technically, the Sultan loans the tract of land for usufruct and not ownership, like *jagir*. This does not violate the prohibition of usury since the Sultan does not charge any interest

[114] Nur al-Din Muhammad Jahangir, *The Tūzuk-i-jahangīrī or Memoirs of Jahangīr*, trans. Alexander Rogers (London: The Royal Asiatic Society, 1909), 74.

on the loan nor does he receive any *quid pro quo* material benefit.

URBAN PROPERTIES

1. **state domain lands belonging to the *sarkar-i muʿalla*:** including gardens, forts, palaces, *haveli*s (courtyard mansions). This was the urban equivalent to *khalisa* where he enjoyed absolute ownership and exclusive rights; any member of the imperial household or outsider required permission for right of use.

   e.g., Prince Aurangzeb sent a formal letter of request to Shah Jahan when he was in the environs of Lahore seeking permission to stay in the Lahore Fort.

2. **privileges to officers (urban equivalent of *jagir*):** gardens, *haveli*s, and *purajat* (agglomerations) issued as imperial privileges through the direct intervention of the Padishah for members of the imperial household, *umaraʾ*, *khanazad*s, and Rajputs.

   benefit: full right to use the land as deemed appropriate; any major changes to land use pattern such as the addition of a building or a modification of garden land to a built area or vice-versa required prior imperial approval. In case of violation, the imperial chancery reserved the right to demolish and restore the *status quo ante*.

   condition: Padishah retains rights of eviction, modification, and annulment of privilege for any reason, including perceived moral misdeeds, administrative incompetency, and financial misdemeanor.

3. ***tamlik* lands in the city *muhalla*:** private ownership of real estate and immovable properties were permitted in the *muhalla*s (neighborhoods) of the Mughal cities. They could be freely bought and sold through sale deeds contracted in the presence of the *qazi*.

4. ***mal-i bi-tan*:** literally, "bodyless good." Property lacking any legal claimant that devolves to the state. It is escheated property of movable and immovable assets confiscated from the members of a deceased officer, or an in-service officer for misconduct. Ownership returned to the *bayt al-mal* (public fund/treasury) and became state domain that the Padishah freely reallocated to any person without prejudice.

5. ***waqf* (endowment):** While endowments were a well-established legal norm, their actual use in the Mughal period was negligible and applied to select categories. They were replaced with *madad-i maʿash* grants partly because agrarian land was the best source of ensuring long-term income stream rather than making an endowment whose wealth the *mutawalli* (executor) could abuse for his personal gains. Given various sectarian and factional conflicts, the endowment was used to a limited extent. Instead, land grants that required regular reapproval ensured maximum political leverage for the Mughals.

OTHER PROPERTIES UNDER IMPERIAL CONTROL

1. **Riverine ports and seaports:** Entry to ports such as Surat and Thatta were under direct imperial control. Imposts, excise, and customs were levied for merchandise and foreign specie and bullion entering Mughal realms had to be recoined.
2. **Mines:** Islamic law stipulates that the ruler has the right to one-fifth share in all minerals and precious metals extracted.

   e.g., Aurangzeb ʿAlamgir had direct control of salt marshes in Northern India.

3. **Precious metals:** Legally, all circulating specie had to be coined at Mughal mints with a deduction made for seigniorage charges.
4. **Free-flowing waters:**
    a. natural rivers: nobody could claim ownership of free-flowing waters and all individuals and groups had free right to use.

        exception: a tax was imposed on Hindu ritual bathing on the *ghats* of the Ganga at Prayag that was abolished in the eighteenth century. However, this tax pertained to a religious use and not water consumption for agrarian and personal needs.

    b. state-made canals: Sultan's right to perceive the tithe (*ʿushr*) from beneficiaries for the right of usage (*haqq al-irtifaq*) as compensation for construction and maintenance costs. Often the tithe was waived off or implicitly deduced as part of the land revenue incidence that fell on peasants.

LEGAL CAVEATS

1. ***ʿariya* (interest-free loans), *ijara* (lease holding for usufruct), and *waqf* (endowment):**

    These three Islamic legal provisions apply to all forms of movable and immovable property and not to land alone. They are subject to conditions and limitations (*shurut*) laid out in Islamic jurisprudence.

    Therefore, *fatawa* collections discuss sections covering *ʿariya*, *ijara*, and *waqf* in chapters (*kitab*) separate from the one dealing with *kharaj* (land tax).[115]

[115] This point is crucial to avoid misrepresentations of Mughal property regimes as we will discuss later.

2. **All non-Sultanate properties:** belonging to non-state actors such as merchants, artisans, and other lay persons are outside the purview of the Sultanate.

   They have the freedom to artisanry, commerce, and tilling subject to payment of duties and taxes.

3. **Unused natural lands:** The rest of the territorial landscape of unclaimed forests, mountains, and other topographical features that were unexploited—in opposition to cultivated land, were unownable and non-contractable (until brought under cultivation or settlement) in Timurid political logic as well as Islamic law since the Mughal polity was not a "territorial state."

Nominal and Real State Ownership of Land:

The Incentive Structure for Entitlements to Claims and Usufruct

The Mughal property regimes should be combined with multiple types of contract that existed from the Mughal State's perspective that governed its abstract pact (*ʿaqd*) between the Padishah and the governed (*riʿaya*). Rather than ownership, usufruct was the predominant logic of settling property claims. Ownership guarantees full right to property and its alienation, gift, lease, loan, and succession whereas possession concerns only the right to usufruct. Usufruct was the foundation of *jagir* benefices of the *mansabdar*s, *madad-i maʿash* grants of the religious establishment, and the land tilled by the peasants. None of them generated allodial rights. The

Mughals granted *tamlik* rights of free ownership in demarcated urban real estate zones in the *muhalla* (neighborhood).[116]

During Akbar's reign, Shaikh Jalal al-Din Thanesari argued in *Tahaqquq-i ʿarazi-yi hind* that the *bayt al-mal* was the nominal and real proprietor of land under Timurid dominion.[117] The eighteenth-century jurist and judge, Muhammad Aʿla b. Qazi Muhammad Hamid b. Muhammad Sabir Faruqi Thanawi too argued this case extensively in *Ahkam al-ʿaradi al-hind*. He reiterated the legal and factual reality that the peasants were not land-tax-paying (*kharaj*) real owners of land. Instead, they were rent-paying (*ujra*) tillers with no legal land-holding rights.[118] Often seen as outlier discussions in contemporary historiography, these juristic views expressed the cornerstone of the Mughal agrarian system. The Timurids never recognized private ownership of agrarian tracts. The totality of the agrarian land belonged to the Mughal *bayt al-mal* akin to the Ottoman *miri* system.[119] The peasants were legally (*sharʿan*) non-landholding, which is why no market

[116] For Ottoman *tamlik* lands, see Halil İnalcık, "Land Possession outside the Miri System," in *An Economic and Social History of the Ottoman Empire, 1300–1914*, eds. Halil İnalcık and Donald Quataert (Cambridge: Cambridge University Press, 1994), 120–34.

[117] Shaikh Jalal al-Din Thanesari, *Tahaqquq-i ʿarazi-yi hind* (Karachi: Mashhur Press, 1963). Also see, Zafarul Islam, *Socio Economic Dimension of Fiqh Literature in Medieval India*. Lahore: Research Cell, Dayal Singh Trust Library, 1990), 90; Habib, *The Agrarian*, 123–5. We need a detailed analysis of juristic ideas of Muslim conquest and the nature of landed property settlement in Hindustan.

[118] *Ahkam al-ʿaradi al-hind*, MS Delhi Arabic 547, British Library. London. Also see Zafarul Islam, "Nature of Landed Property in Mughal India: Views of an Eighteenth Century Jurist," *Proceedings of the Indian History Congress* 36 (1975): 301–9. Many similarities exist between the juridical understanding of agrarian land settlement among Hanafi jurists in the Ottoman territories and the Mughal ones. Unfortunately, treatises of the *ʿulamaʾ* in the subcontinent have not been thoroughly studied. For the Ottoman legal position, see Baber Johansen, *The Islamic Law on Land Tax and Rent. The Peasants' Loss of Property Rights as Interpreted in the Hanafite Legal Literature of the Mamluk and the Ottoman Periods* (London: Croom Helm, 1988).

[119] Kenneth M. Cuno, "Was the Land of Ottoman Syria *Miri* or *Milk*? An Examination of Juridical Differences within the Hanafi School," *Studia Islamica* 81 (1995): 121–52.

transactions can ever be found in Mughal records for agrarian lands. A careful comparison between Hanafi juristic views and its translation in Mughal agrarian settlements remains wanting.[120]

Mughal agrarian communities had no legal titles to land. However, a distinction existed between the claims of land-tilling peasants and the rural intermediaries, *zamindar*s. Peasants had weak ownership of the usufruct, that is, the crop, and not the land itself. Since they had permanent right to possession of lands for subsistence, they could not be arbitrarily evicted. When eviction was necessary, for instance, in circumstances like the construction of forts, the Mughal State took over the land under eminent domain of the *bayt al-mal*. The state paid compensation for the loss of income stream by offering another piece of land of equal value. Though evicted from the said land, peasants were settled elsewhere where they continued to enjoy usufructuary ownership.

Beyond the peasants' subsistence, the rest of the revenue was sliced between the Mughal State and its military elites. In parts of the empire, especially, the quasi-permanent *khalisa* lands of the Indo-Gangetic plains, intermediaries like minor *raja*s, feudatories, and local chieftains were titled *zamindar*. Their revenue claims (*malikana*) were subject to satisfactory management of cultivation. They received mandates (*sanad*) from the imperial court, which could issue or reissue

[120] For studies without taking into account Hanafi law, see Jadunath Sarkar, "The Revenue Regulations of Aurangzib (with the Persian texts of two unique farmans from a Berlin Manuscript)," *Journal and Proceedings of the Asiatic Society of Bengal* New Series 2 (1906): 223–55; Shireen Moosvi, "Aurangzeb's *Farmān* to Rasikdas on Problems of Revenue Administration, 1665," in *Medieval India 1: Researches in the History of India 1200–1750*, ed. Irfan Habib (New Delhi: Oxford University Press, 1999), 198–208. For colonial interpretations, see Neil B. E. Baillie, *The Land Tax of India according to the Moohummudan Law: translated from the Futawa Alumgeeree, with explanatory notes* (London: Smith, Elder, & Co., 1873); Neil B. E. Baillie, "Of the Kharaj or Muhammadan Land Tax; its Application to British India, and Effect on the Tenure of Land," *Journal of the Royal Asiatic Society* 7 (1875): 172–88. Also see Zafarul Islam, "Aurangzeb's *farmân* on land tax: An analysis in the light of *Fatâwâ-i 'Alamgîrî*," *Islamic Culture: The Hyderabad Quarterly Review* 52, no. 2 (1978): 117–26. For the rent system and usufruct rights in the Ottoman and Mamluk agrarian world, see Michael Winter, *Egyptian Society under Ottoman Rule, 1517–1798* (London: Routledge, 1992). Also see Ursula Wokoeck, "The Expropriation of the Pasha's Peasants," in *Mamluks and Ottomans: Studies in Honour of Michael Winter*, ed. David J. Wasserstein and Ami Ayalon (London: Routledge, 2006), 241–51.

management rights and evict or reinstate them from lands under their control.[121] Therefore, in the Mughal world, all agrarian agreements on sale, lease, inheritance, and gifting concerned possession (*qabd*) alone, i.e., cultivation rights, and never land ownership. This made for minimal litigation on cases of encroachment or misappropriation of revenues. It was not uncommon to pursue the eviction of *zamindar*s for non-respect of these terms and conditions. The Mughal *zamindar* was neither landlord nor proprietor. British colonial *zamindari* created allodial rights to land.

***Sulh*, Hanafi Law, and Property Regimes in Timurid statecraft**

A late *dastur al-ʿamal* manual, attributed to Raja Rup, a disciple of Todar Mal, notes that Hazrat ʿAlamgir had "imposed *jizya* (*jizya muqarrar karda*) on non-Muslims (*kharij-i din-i islam*)" following the path of *sulh-i kull* (*tariqa-yi sulh-i kull*).[122] This portrayal may come across as a shocking aberration to today's readers used to the idealized image of Akbar's *sulh-i kull* (peace for all). However, for the Mughals, this was no aberration since the primary meaning of *sulh* was a legal settlement based on a "compact." *Sulh* was the compact between the ruler and the ruled; it was an agreement resulting from the peaceful submission of subjects to the conquering or ruling Padishah, which included the *dhimmi*s' acceptance of his rule. The Akbari incarnation of *sulh-i kull* indeed has a long trajectory going back to the notion of *sulh* in classical Islamic legal theories of land tax that Muslim jurists had developed as early as in ninth-century Iraq.[123] *Sulh* was a

[121] Habib, *The Agrarian*, 178.

[122] *Dastur al-ʿamal*, MS Or. 2026, British Library, London, fol. 53b.

[123] Hurvitz, "Law and Historiography," 362. Also see Hossein Modarressi, *Kharāj in Islamic Law* (London: Anchor Press, 1983).

product of the way dominion was imposed on the realms and the property claims of the subjects guaranteed. In the Mughal world, this was founded upon the *bayt al-mal*'s nominal ownership of all the agrarian lands that the legally landless peasantry tilled.

What were then the nature of Timurid dominion and its consequences for statecraft? In a perceptive note, the British philologist and judge, William Jones had tried translating the Islamic conception of dominion into the Roman legal term of *dominium*: the control of property and estate and the individual's right to its possession, use, and transfer. In a marginal note in one of his manuscripts, he realized the intriguing fact that Islamic law suspended the subjects' property claims "[d]uring usurpation, interregnum, universal anarchy, revolt, etc."[124] Under these various forms we may consider fit to be deemed a "state of exception," property claims could not be secured. Jones knew that under Islamic law, nominally, all legal operations were suspended during the interregnum. So, when the Battle of Succession took place between Prince Aurangzeb and his brothers in 1658–59, this prolonged struggle at the usurpation of the throne was an interregnum. Contemporary European travelers like Bernier often projected it inappropriately as a "civil war" waged between princes and different factions of nobility supporting them. Shah Jahan was sick even though he was still at the helm of the affairs. The *umaraʾ* and *mansabdar*s knew their legal titles were no longer guaranteed; they had to wait and watch who would occupy the throne! Would Shah Jahan retain power when his four sons were fighting each other? Indeed, whoever would have won, it was unlikely they would restore Shah Jahan. This was nothing but a collective audacious rebellion of all: Dara, Aurangzeb, Murad Bakhsh, Shah Shujaʿ. In this period,

[124] Sir William Jones Papers, MSS Eur C 639, British Library, London, 23b. I have argued elsewhere on early colonial jurists' philological scholarship on Islamic jurisprudence in relation to Mughal authority. See Kanalu, "The Pure Reason."

effectively most contracts of statecraft were ineffective. No new benefices or increases in *zat* and *savar* ranks were created during the "state of exception." Of course, princes promised future favors as an incentive to induct them and their military support. Yet, there was no guarantee these gentlemanly agreements could be honored unless one was on the side of the victorious party. Indeed, attention to Mughal documents demonstrates gaps during periods of succession conflicts and a sudden spike in the grant of legal titles after accession to recreate privileges and prebendal rights. All high-level state decisions were kept at bay during the battles of succession since Muslim jurists considered this phase absent of sovereign power, a "state of exception" until a new *imam* was appointed. Moreover, during usurpation and rebellion (*ghasb*), the old *imam* could take back control and be reanointed.[125] Indeed, as princes, both Shah Jahan and Jahangir had found themselves in such a scenario when they failed miserably in deposing their respective fathers. The costs of Timurid succession practices were indeed high; there was no immediate accession but a protracted struggle even when the Padishah died on the throne.

Once the interregnum ended, the reconstitution of the Timurid statecraft began under a new Padishah, whose decisions superseded that of his ancestors. All contracts were renegotiated, sealed, and legally approved or not by the new Padishah. Every legal title—however insignificant it might have been, had to be renewed. Being a personal contract between the Padishah and his subjects, nobody had generic property rights, not even the Timurid princes. Therefore, in private collections of individuals, *mansabdar*s, Sufi shrines, and the *aʾimma*, we find *farman*s issued upon the accession of the new Padishah to reconfirm the claims.

[125] For a theory of rebellion, see Khaled Abou El Fadl, *Rebellion and Violence in Islamic Law* (Cambridge: Cambridge University Press, 2001). On Ottoman battles of succession, see Nicolas Vatin and Gilles Veinstein, *Le sérail ébranlé. Essais sur les morts, dépositions et avènements des sultans Ottomans, XIVe-XIXe siècle* (Paris: Fayard, 2003).

The continuous resettlement of Hindustan and the Deccan was no mean task. It entailed high transaction costs of redistributing prebendal rights and land grants. Revising fiscal and financial priorities went hand in hand with the perpetual renegotiation of contractual and non-contractual claims of the *mansabdari* elite. Yet, Mughal dominion was always an unending game of power and an unfinished business in its actualization. Cadastral surveys of lands remained insufficient; even core regions like Bihar were resurveyed.[126] Increasing land in the *terai* regions below the Himalayas had been brought under cultivation since the sixteenth century; these were slow and gradual processes of transforming the forested lands to cultivable ones that happened over the course of a couple of generations if not centuries. For us, attuned to the disappearance of thousands of hectares of forested lands in a matter of few years today, these long gestation periods and slow methods of increasing agrarian lands are hard to imagine. In Khandesh that Akbar had conquered in 1599, Diyanat Khan, the *divan* of Deccan had to revise the lists of the *pishkashi* (tribute-paying) *zamindar*s in 1690 to determine the arrears that remained uncollected.[127] Not only such administrative difficulties but also environmental constraints plagued the Mughals. Large, uncleared lands and thick forest cover made military inroads into much of Gondwana virtually impossible. Several parts of northern Uttar Pradesh and Bihar bordering Nepal, Upper Assam, the interior of Bengal as well as hilly tracts of the Deccan Plateau and the Chota Nagpur Plateau were tenuously controlled.

[126] In the mid-1670s, Aurangzeb ʿAlamgir had ordered a fresh survey and measurement of Bihar. See Muzaffar Alam, "Eastern India in the Early Eighteenth Century 'Crisis': Some Evidence from Bihar," *Indian Economic and Social History Review* 28, no. 1 (1991): 43–71.

[127] M. A. Nayeem, "Mughal Documents relating to the Peshkash of the Zamindars of Suba Khandesh," in *Mediaeval Deccan*, *History: Commemoration Volume in Honour of Purshottam Mahadeo Joshi*, eds. A. R. Kulkarni, M. A. Nayeem, and T. R. de Souza (Bombay: Popular Prakashan, 1996), 192–213.

In the Mughal world of power, loyalty, and authority, the only person whose property claims we have not discussed so far are that of the Padishah. Since he did not own Hindustan, and not even the Red Fort, what was his property? Aurangzeb ʿAlamgir possessed a few villages outside Shahjahanabad as well as salt marshes from which he raised his strictly personal incomes. These properties were his "personal domains" (*khalisa-yi khassa*) as opposed to the Mughal State's vast "state domains" (*khalisa-yi sharifa*). He paid a meagre sum from his personal income alone at the rate of 2.5 percent as his contribution to the canonically stipulated alms (*zakat*). All Mughal forts, mansions, palaces, gardens, *khalisa* lands, hunting grounds, public properties, physically and nominally belonged to the *bayt al-mal*. The entire agrarian territories were nominally so. All these properties were under his custody as long as he was Padishah. Throughout his reign, he enjoyed enormous, accumulated wealth (stocks) and incomes (flows) belonging to the *bayt al-mal*; he lavishly spent them as he saw fit. Yet, he had to be financially prudent. In years such as 1670, when the *khalisa-yi sharifa*'s income was in the red to the tune of fourteen lakh rupees, he made budgetary cuts for his and his household's expenditures.

The Padishah as *imam* had the absolute right to modify any settlement or provision previously made. All officers had to secure his permission as the ultimate arbiter of property claims but also the person who allocated lands and dictated the nature of land use. He had control over the thing and its use, an idea entirely consistent with Hanafi legal thinking that the *imam* settled both land allotment and land use policy. The idea of *istighlal* (acquisition of revenue proceeds) rather than *tamlik* (ownership) was central to Timurid property holding. Classical Islamic law allowed the possibility for both forms of property claims and even prioritized *tamlik* as a norm to create stronger claims for the *riʿaya* (subjects). In the post-Mongol context, in Iran, South Asia, and the Ottoman territories, the influence of Persianate models of governance had played a

prominent role in suppressing that possibility since the Buyid and Seljukid transformation.[128] When *iqtaʿ* as a system of benefice developed in medieval Iran, it was of two kinds: *iqtaʿ al-tamlik* (concessions of ownership: military and land grant of ownership) and *iqtaʿ al-istighlal* (concessions of usufruct: revenue grant for the acquisition of tax proceeds as remuneration). These latter non-inheritable *iqtaʿs* granted for usufruct were common in the Delhi Sultanates too.[129] Such practices continued in a more sophisticated manner under the Mughal *jagirdari*. None of these created European-style fiefs. The relation of the Timurids to all their subjects was founded on the idea of the bestowal of legal titles to the "ownership of usufruct" rather than the "ownership of substance," which sits neatly with the juristic idea that Mughal lands belonged to the *bayt al-mal*. We can unequivocally say that there was virtually no *tamlik* (private ownership) property outside designated urban areas in Mughal South Asia. Hence, as we will see later, surviving Mughal sale deeds (*baiʿnama*) from the seventeenth century pertain to urban real estate and buildings and rarely ever to agrarian lands. *Qazi*s remunerated by the Mughal State attested and oversaw sale contracts; they could not authorize illegal market transactions of agrarian property holdings, which were defined as state lands.

The different sets of property, ownership, and usufruct claims distributed amongst the elite created a mosaic of graded sets of properties: state domains, lands loaned or leased from state lands, unownable public lands, and individual ownership. Mughal property regime as a whole was a bundle of mixed properties, transactions, and financial obligations, all weighed against military

[128] See Reuven Amitai-Preiss, "Turko-Mongolian Nomads and the *Iqṭāʿ* System in the Islamic Middle East (ca. 1000-1400 AD)," in *Nomads in the Sedentary World*, eds. Anatoly M. Kazanov and André Wink (Curzon: Curzon Press, 2001), 152–71. Also see Lambton, "The Evolution"; Cahen, "L'évolution de l'iqtâʿ." For the Iranian context, see Ann K. S. Lambton, *Continuity and Change in Medieval Persia: Aspects of Administrative, Economic and Social History, 11th–14th Century* (London: I. B. Tauris, 1988), 97–129.

[129] Qureshi, *The Administration*, 124. For the general principles of benefice, see Aghnides, *Mohammedan*, 500.

services and success based on contractual and non-contractual negotiations. Success was not only rewarded; failure was harshly punished by revoking fiscal and financial assignments in a carrot and stick policy under a system of prebendalism. Over the course of two centuries from the 1530s onwards, the system had given rise to perpetual renegotiations of claims assigned to officers in a process we may call "successive prebendalization." For instance, *Amir al-umara'* Shayista Khan's death in late 1693 brought in forty million rupees of his escheated wealth back to the Mughal exchequer. His death also opened vacancies in several official positions the Mughal officers could covet with imperial favor. Shayista Khan's *faujdari* of Islamabad (Mathura) was transferred to Bishan Singh to fill the vacancy. Aurangzeb 'Alamgir also allotted the *jagir* of Koh *pargana* worth 150,00,000 *dam*s.[130] But Bishan Singh was unenthusiastic about Koh. His *vakil*, Meghraj did not accept the *sanad* (imperial mandate). Moreover, the Timurids were willing to swap Koh with Basawara the Kacchawaha Rajputs already held. Bishan Singh was willing to give away lands in Bayana, but the imperial court showed no interest in it. Finally, Meghraj forwarded another petition through the imperial household staffer, Bahrmand Khan, who got Kol *pargana* (Aligarh) and a *tankhva* of 50,00,000 *dam*s approved by the Padishah. These transactions were ongoing at the same time as the Rajputs were negotiating *zamindari* rights of Malpura near Tonk for one of their affiliates, Hari Singh. However, Hari Singh had been implicated in an enquiry surrounding skirmishes at the Lamba Fort near Malpura (Hari Singh had constructed the fort at a cost of half a million rupees in 1692, the town still bears his name, Lamba Hari Singh). The request for *zamindari* had to be postponed for several months pending enquiry. Many of these agreements

[130] "Persian *vakil* report from Meghraj to Bishan Singh dated 7 jumada al-thani 1105 AH (January 24, 1694)," Doc. no. 917, *Persian Vakil Reports*, Bundle no. 1, Rajasthan State Archives, Bikaner.

required depositing money in the treasury as surety drawn against a personal responsibility bond (*muchalka*).

Due to the interconnected nature of these transactions, it would be unwise to ascertain them as pure property or fiscal transactions. Instead, several kinds of *huquq*—interests and claims, were at play. For the Mughal State, Shayista Khan's death opened the need to fill the vacancies in administrative positions like *faujdari* but also grant additional *jagir*s nearby as *quid pro quo*. Of course, Aurangzeb ʿAlamgir would not give away new lands without confiscating back older assignments of the Rajputs: rank determined the extent of *jagir* size. He preferred ceding Basawara and not Bayana. The Rajputs though wished the opposite to be the case. However, the additional *faujdari* duties earned Bishan Singh a hefty *tankhva* (salary) from the Mughal exchequer. In between all this, Rajputs were seeking *zamindari* for one of their own subordinates. Throughout these protracted negotiations that the Rajput *vakil*, Meghraj and Bahramand Khan in the Mughal household staff carried out, financial considerations were at the core. The Timurids shifted benefices, offices, grants, and titles, which reflected the protracted character of allocations that went on *ad infinitum*. These reallocations were not arbitrary in nature but deeply imbricated with inter-related fiscal, financial, and transactional objectives. All settlements, allotments, and claims were contingent to the *imam*'s decision to ratify (or not) on which he had extensive powers.

In the next two chapters, we address the grammar of these property regimes and the economic incentives behind their seventeenth-century historical transformation through four distinct strands of thinking. First, we show the structural patterns in Mughal elite investments through cadastral surveys of urban property holdings, imperial privileges of urban agglomerations, and contracted land swaps for properties such as gardens. That is, we examine the long-term investment opportunities within Mughal property options that benefited the upper echelons rather

than their short-run earnings and income streams. Second, we explain how various legal methods such as escheat, pre-emption, public domain, state lands, and agnatic and intestate succession found expression among the upper echelons. The Mughal chancery routinely ratified and validated these claims through legal notarization. The rationale behind legal modifications made to elite property claims were based on Islamic as much as Chinggisid norms. Third, we examine the variety of uses and economic incentives that created lease holdings called *ijara*. They have been unfortunately confused with another scheme, tax-farming (*iltizam*) prevalent in the Ottoman territories. Here, we show how a recourse to Hanafi law is essential to avoid categorical errors in the historical interpretation of Mughal legal provisions and political maneuverability. Fourth, in the Mughal context, we circumvent dealing with the presence/absence of what the British called "market relations" in the buying and selling of land.[131] This polemic was based on the common-law distinction of "real property," originating in allodial land laws prevalent in medieval Europe. They are central to property relations in the colonial economy but are not of immediate concern to the Mughal historian. Our reasoning should be substituted by the Hanafi logic of immovable property (*ʿaqar*) and legal transfer (*intiqal*) that governed specific categories of lands in the Mughal Empire depending on their legal classification. Transfer of land was possible on satisfying various types of legal conditions, especially, Mughal State declaration of parcels of land as *tamlik* (ownership) to be legally contractable.

[131] For the British context, see Ranajit Guha, *Rule of Property for Bengal: An Essay on the Idea of Permanent Settlement* (Durham: Duke University Press, 1996).

These interlocking proprietary-financial regimes sustaining the military-transactional circuits of the elite were themselves founded on Timurid legal normativism; they were guaranteed and respected through contracts formulated as per Hanafi legal procedures.

Chapter 3

The Territorialization of the Mughal Urban Political Economy:

Mapping Imperial Privileges and Agglomerations

In this chapter, we develop a systematic analysis of the property disbursal mechanisms, less in agrarian land, and more in urban spaces. Mughal historians have totally ignored masterplans, zonal divisions, and differentiated land use that regulated urban real estate. Surviving architectural remains provide little idea of the socio-cultural and legal aspects of urban agglomerations. The reason behind this lacuna is straightforward: we have no Mughal cadastral surveys, maps, or masterplans even for its greatest city, Shahjahanabad. Yet, as we will show in this section and the following, when we suture a wide range of Mughal-era records with Hanafi law, on the one hand, the metalogic of urban real estate management becomes crystal clear. On the other hand, we can zoom into minute details of allocation, ownership, rental, lease holding, and market values of individual courtyard mansions, gardens, agglomerations in imperial cities and towns.

Mughal cities were organized, dependent on their relation to the state's purposes along the following lines:

(1) State properties occupied by forts, gardens, and mansions: both land and built-up area owned by the state; use reserved for the imperial household subject to the Padishah's permission.

(2) Other state properties (*sarkar-i muʿalla*) rented or allotted rent-free as residences to the

elite and to house *karkhana*s: both land and built-up area owned by the state; use and occupation allowed at the Padishah's pleasure.

(3) Properties with full *tamlik* rights (land and built-up area) belonging to private individuals living in the *muhalla*s (neighborhoods).

(4) Agglomerations outside walled cities called *purajat* (sing. *pura*): imperial privileges issued to the elite officers to settle populations; land ownership remained with the state and built-up area was individually owned or rented by the inhabitants.

By the early eighteenth century, the growth of agglomerations, the production of artisanal wares and textiles, and regional commercialization promoted widespread urbanization in Mughal hinterlands. While large cities and smaller towns (*qasba*) existed throughout the region, we know little on the nature of their real-estate expansion, which were products of imperial privileges. Unlike farm and pasture lands that rural communities tilled and *zamindar*s controlled over generations, urban agglomerations cannot be assumed to be hereditary customary holdings. Urban lands invariably required cadastral surveys of a different kind. The notarization of claims and settlement of land boundary markings of real estate happened across *qasba*s of northern and central India as well as the Deccan. Many officers were prominent claimants of imperial privileges Aurangzeb ʿAlamgir issued through his "prerogative" powers. They set up *purajat* or agglomerations and settled them with traders, artisans, and other communities from caste and clan groups close to them. These groups either came from native territories (*vatan jagir*) or concessions (*jagir*) as well as moneylending groups who financed Mughal officers. These privileged officers enjoyed autonomy to recruit lower-tier and regional elite in managing and exploiting these agglomeration settlements. The nature of the urban control mechanisms we delineate below have

been largely neglected in existing literature leading to a poor understanding of urban property regimes in the precolonial era.[132]

The urban property regimes in Mughal South Asia were a dual play between imperial privileges to construct *purajat* (agglomerations) on the one hand, and, on the other, the grant of rights to build private *haveli*s (courtyard mansions) and gardens.[133] The cities were urban clusters and settlements separated at times by marshy lands, hunting grounds, and semi-forest cover, which could be easily recovered for further extension of property claims. Other than the walled cities and their vicinities, which created a contiguous urban sprawl, *haveli*s and gardens remained distinct pockets of built land, at times, separated from the neighborhoods of the commoners, or even wooded lands. Given the low population density, these urban clusters were less crowded. Nearby villages and vegetable gardens supplied perishable produce to the urban dwellers. Much of the real estate lay vacant on the fringes of urban spaces that could be absorbed in the creation of agglomerations. Bernier had noted quite perceptively:

> It is because of these wretched mud and thatch houses that I always represent to myself *Dehli* as a collection of many villages, or as a military encampment with a few more conveniences

[132] The late seventeenth and the early eighteenth centuries have been generally examined as a period of *jagirdari* crisis or the strengthening of *madad-i maʿash* grant holders. See Satish Chandra, "The Jagirdari Crisis, A Fresh Look," in *The Decline of the Mughal Empire*, ed. Meena Bhargava (New Delhi: Oxford University Press, 2014), 13–22; Muzaffar Alam, *The Crisis of Empire in Mughal North India: Awadh and the Punjab, 1707–1748* (New Delhi: Oxford University Press, 1986).

[133] A somewhat similar phenomenon existed in Paris and other French cities where the nobility received royal privileges to build their *hôtels particuliers*. The Avenue des Champs-Elysées was lined up with *hôtels particuliers* the French high nobility occupied in the *Ancien régime* as they were a walking distance from the Palais du Louvre, the French monarch's residence. See Albert Babeau, *La Ville sous l'Ancien Régime*, vols. 1-2 (Paris: L'Harmattan, 1997). Also see Betty Behrens, "Nobles, Privileges and Taxes in France at the End of the Ancien Régime," *Economic Review* 15, no. 3 (1963): 451–75; Chaussinand-Nogaret Guy, "Le fisc et les privilégiés sous l'Ancien Régime," in *La Fiscalité et ses implications sociales en Italie et en France aux XVIIe et XVIIIe siècles Actes du colloque de Florence (5-6 décembre 1978)* (Rome: École Française de Rome, 1980), 191–206.

than are usually found in such places. The dwellings of the Omrahs [*umaraʾ*], though mostly situated on the banks of the river and in the suburbs, are yet scattered in every direction.[134]

Urban spaces in the subcontinent were a mosaic of Indic and Islamic elements of organizing space, religious edifices, and urban planning.[135] In urban land too, domain lands (equivalent to *khalisa*) belonged to the Mughal *sarkar-i muʿalla*. Within the *sarkar-i muʿalla*, the Mughal Padishahs also granted lands for the private use of the *umaraʾ* and the Rajput *rajas*. Several kinds of urban expansion took place. In particular, when the Padishah built his palace, the *umaraʾ* too surrounded his properties by building their own mansions. Shah Jahan established Mukhlispur in Punjab where he built a palace. Around his palace, a settlement of the officers and court elite grew. They built mansions around, making it clear that plots of land were allocated for the construction of buildings and gardens upon petition.[136] As prince, Aurangzeb founded the Deccan city of Aurangabad within the Daulatabad *sarkar*. Even here, the *balda* (city proper) was distinct

[134] Bernier, *Travels*, 246–7.

[135] We cannot here develop in greater depth on the emergence of paradigms of the "Islamic City" centered around mosques, *madrasa*s, *muhalla*s in South Asia. Some of these similarities and dissimilarities with cities elsewhere in the Islamic world will become clear as we proceed in our analysis in this chapter. The diverse religious context of South Asia meant a mixed plurality in cities and *qasba*s. In Mughal imperial cities, resemblances can be found with cities elsewhere like Istanbul, Cairo, and Damascus. For the literature on the Islamic world, see Albert Hourani and S. M. Stern, eds, *The Islamic City: A Colloquium* (Philadelphia, PA: University of Pennsylvania Press, 1970); Janet Abu-Lughod, "The Islamic City: Historic Myth, Islamic Essence, and Contemporary Relevance," *International Journal of Middle East Studies* 19, no. 1 (1987): 155–76; Raymond, André, *The City in the Islamic World* (Leiden: Brill, 2008). For a general survey of Mughal imperial cities, see Stephen P. Blake, *Shahjahanabad: The Sovereign City in Mughal India, 1639–1739* (Cambridge: Cambridge University Press, 1993); Ebba Koch, "Mughal Agra: A Riverfront Garden City," in *The City in the Islamic World*, vol. 1, eds. Salma Khadra Jayyusi et al. (Leiden: Brill, 2008), 555–88.

[136] Bakhtawar Khan, *Mir'āt al-'ālam. History of Awrangzeb (1658-1668)*, ed. Sajida S. Alavi, vol. 1 (Lahore: Research Society of Pakistan, 1979), 281. Also see Jadunath Sarkar, *The India of Aurangzib (topography, statistics, and roads) compared with the India of Akbar: with extracts from the Khulasatu-t-tawarikh and the Chahar Gulshan* (Calcutta: Bose Brothers, 1901), 17.

from the *mahall*s surrounding it. Mughal officers had built several *haveli*s on the highway as one entered Aurangabad.[137]

The second half of the seventeenth century witnessed a new wave of urbanization and expansion through financial investments of the *umaraʾ* and the Rajputs in *purajat*. The recipient of this imperial privilege was responsible for the *pura* territorialization. They divided them into clusters of plots and demarcated thoroughfares for access. Often, they settled trading and artisanal communities in these agglomerations and built their own gardens and *haveli*s. Local chieftains, *mahajan*s, and *qanungo* families as well as artisanal and weaver communities settled in these agglomerations. Plots were either sold or gifted to them. Indeed, the Rajputs kept enumeration of the professional caste groups present in their towns and *pargana*s. Furthermore, the urbanization process reveals no "communal" attitude. Rajputs were granted largesse more than any other ethnic-warrior group; Muslim officers too received privileges to build agglomerations.[138]

The transfer of claims and the "rights to possession" to agglomerations were made at the imperial court. The Mughal officers' *vakil*s (agents) negotiated imperial privileges at the Padishah's *dargah*. Through their intermediation, the Mughal officer made a request for a particular kind of land or a garden based on his status. It was formally forwarded to the *khidmat-i ʿarayiz* (superintendence of petitions) like the one Bakhtawar Khan held. If it were approved, which took months or even years, the *darugha* (superintendent) would direct the *bakhshi* (paymaster) and *divan* (officer in-charge) to prepare a *farman* and record it in their accounts. Once

[137] *Dastur al-ʿamal-i shahanshahi*, MS Add. 22,831, British Library, London, fol. 59a.

[138] For a comparative perspective, see Jean Aubin, "Éléments pour l'étude des agglomérations urbaines dans l'Iran médiéval," in *The Islamic City: A Colloquium*, eds. Albert Hourani and S. M. Stern (Philadelphia, PA: University of Pennsylvania Press, 1970), 65–75.

this *farman* was prepared, it would be sent to the officer if he were stationed at court or dispatched to him at his official posting. The *vakil*s regularly kept their masters informed in their correspondence on the status of their claims telling them if the order had been agreed upon or not and whether the document was under preparation. The *farman* was presented to the local administration. Local *qazi*s notarized their documents, local settlement officers like *munsarim*s, and *kotwal*s released land for the creation of urban agglomerations. The imperial news-reporters tracked all these dealings and reported back any mischiefs and manipulations at play directly to the Mughal court. Aurangzeb ʿAlamgir kept his eyes and ears open to problems that arose under these "multiple overlapping jurisdictions." The "settlement officer of the agglomeration," *munsarim-i purajat* was in-charge of running the *pura*, especially, collecting house rents, garden taxes, and maintaining public infrastructure such as temples, mosques, wells, and roads. Keeping in mind his patron's interests, he had to also satisfy the Mughal *kotwal*s and *qazi*s that order was maintained. These were well-chartered territories.

Purchasing Real Estate in *muhalla*s

Banaras that the Mughals called Muhammadabad in the court records and legal documents, had seen a building spree between the 1660s and the 1730s.[139] Aurangzeb ʿAlamgir himself ordered the construction of two major mosques: the Gyanavapi Mosque within the precincts of the older Visvesvara Temple in 1669 and the Dharahara Mosque just above the Pancaganga Ghat on

[139] For the cultural and religious landscape of Banaras, see Madhuri Desai, *Banaras Reconstructed: Architecture and Sacred Space in a Hindu Holy City* (Seattle: University of Washington Press, 2017). For an analysis of the Brahmanical intellectual and social culture of Banaras, see Rosalind O'Hanlon, "Letters Home: Banaras Pandits and the Maratha Regions in Early Modern India," *Modern Asian Studies* 44, no. 2 (2010): 201–40; Rosalind O'Hanlon, "Speaking from Siva's Temple: Banaras Scholar Households and the Brahman 'Ecumene' of Mughal India," *South Asian History and Culture* 2, no. 2 (2011): 253–77.

the banks of the Ganga.[140] The Raja of Marwar, Jagat Singh of Udaipur had built a *haveli* on Rana Mahal Ghat in 1670. Sawai Jai Singh II (1686–1743) built a Rama temple on the Pancaganga Ghat in 1699. The real estate around Manmandir Ghat, also known as Somesvara Ghat, had been sponsored by his ancestor, Sawai Man Singh of Amber in 1586. On the rooftop of these palatial structures nearby, Jai Singh II built the *Jantar Mantar*, an astronomical observatory from 1697 and completed in 1710. The Rajputs also took care of renovating these ghats. This area is today called Bengali Tola. In 1683, Durgadas was appointed caretaker of Manmandir and paid his *haqq* (claim/salaries) of 331 rupees for duties over 6 years 3 months 22 days. The payment was done against a receipt, a copy (*naql*) of which the *vakil*s would have sent to the Rajput chancery in Amber for them to be certain the transaction was not fraudulent.[141] Mir Rustam ʿAli built the Mir Ghat in 1735 and had several gardens and *haveli*s in Gangapur and Bhaironath neighborhoods. An Agarwal's *haveli* and land part of ʿAbd al-Bari Rajab ʿAli's *haveli* stood on Nayak ko Ghat (later known as Mysore Ghat). In Bibi Raji muhalla, not far from the Visvesvara muhalla, the Rajputs bought several real estate properties. Bibi Raji muhalla centered in the surroundings of the Lal Darwaza masjid constructed by the architect Kamal Akhtar around 1450 in honor of Bibi Raji (d. 1477) (and not Raziya Sultana as is identified today), the Jaunpur Sultan, Mahmud Shah's queen.

[140] For various buildings the Mughals constructed in Banaras, see Rana Singh, *Banaras: Making of India's Heritage City* (New Castle upon Tyne: Cambridge Scholars Publishing, 2009), 395 ff. Also see George Michell and Rana Singh, *Banaras: The City Revealed* (Mumbai: Marg Publications, 2005). For Prince Aurangzeb's *nishan* guaranteeing the religious rights of the Brahmins in Banaras in 1654, see Rajani Ranjan Sen, "A Firman of Emperor Aurangzeb: With a translation of the Firman by D. C. Phillott," *Journal and Proceedings of the Asiatic Society of Bengal* New Series 7 (1911): 687–90. Sen erroneously calls it a *farman*. Aurangzeb had not yet acceded to the throne and endorsed the document with his *nishan* (prince's seal) as can be seen on the document. Only Shah Jahan had the authority to issue a *farman* in 1654.

[141] "Rajasthani petition from *vakil* Govind Chand to Ram Singh dated jyestha badi 2 1740 (May 2, 1683)," Doc. no. 149, *Rajasthani arajadashta*, Bundle no. 3, Rajasthan State Archives, Bikaner.

Despite all this, vacant sites were common; 2200 *gaz* given to Akbar's officer, Todar Mal remained unused.

Rights to Pre-Emption in Urban Real Estate

The Rajputs, who often got parcels of lands to build agglomerations in city-centers as well as lands for personal use such as *haveli*s and gardens within imperial urban *khalisa* lands, made their own cadastral surveys. In these maps, they gathered as much information as possible for purposes of buying up properties, ascertaining their existing claims, and petitioning for future imperial requests for lands of their choice. The cadastral survey in a Rajput map of Banaras points to these features. They estimated the total circumference of a property (*parkama firvaj jami tul gaj 7 araj gaj 7*) of a plot and pointed to another "plot belonging to the Brahmin and the *hafiz*" (*jayga brahmana va hafiz ki*). Separating the two was a "lane in between totaling 50 *gaj* in length and 7 *gaj* in width" (*bich ko rasto gali ko tul gaj 50 araj gaj 7*). The lane was public property. Todar Mal's *haveli* which had stood at a distance from the Visvesvara Temple (later, the Gyanavapi Mosque, which stood within part of the precincts) was measured at 175 *gaj* (*gaz*) or 1575 square feet. They also noted interest in buying a plot belonging to a Brahmin thus: "the land of a devout brahman who is willing to sell only if he gets a plot somewhere else in exchange." And, in some cases, owners were unwilling to sell. The Rajputs had spotted a new land (*nayi jagah*) with a Revati Brahmin; he was unwilling to part with his original lands. Other spots noted on the map include the *chabutra* of Visesurji (*sikharabandha* of the Visvesvara Temple) that Vir Singh Bundela had built during Jahangir's rule. Moreover, the map added miscellaneous notes on other plots and properties like *i jaygah ko dhani nahin bechai*—"the owner does not wish to sell this real estate plot." We may assume that the Rajputs coveted these properties for purchase but were unable to

convince the owners or provide them satisfactory compensation. Another note remarked carefully that one of these lands was *muttasil* (contiguous or adjacent) to one side of the road where Darvesh Beg's *haveli* stood.

All these diverse types of property transactions such as imperial privileges, purchase of land, and swapping of plots that *qazi*s ratified should make us pause and think about the peculiarities of Hanafi, which—unlike other schools of Islamic jurisprudence, gave wide-ranging pre-emption rights to non-Muslims. Unlike religious provisions, civil property and public institutional procedures of Hanafi law did not exclusively apply to Muslims alone. Hanafi pre-emption laws (*shufʿa*) treated Muslims and *dhimmi*s as protected communities living together in peace within a Muslim State practically equally except for minor discriminatory rules;[142] Mughal *qazi*s applied them. The *FA* notes that Muslims as well as *dhimmi*s have first rights to buy lands adjacent to their properties through three legal and successive demands:[143]

a. *talab muwasaba* (immediate demand): the pre-emptor makes a demand by seizing the opportunity as soon as a property has been sold. No witnesses are needed.
b. *talab taqrir wa ishhad* (demand with invocation): the pre-emptor follows up on the "immediate demand" by making his intentions to acquire the said property in the presence of at least two witnesses.
c. *talab tamlik* (demand of possession): the enforcement of the pre-emptor's desire to acquire the property brought by a legal suit before the *qazi*. The *qazi* decrees the

[142] In general, Hanafi law hardly discriminated individuals on religious lines on such matters of civil property claims. The translation of Islamic jurisprudential norms into practicable rules requires a detailed study of its own.

[143] Al-Haj Mahomed Ullah ibn S. Jung, *The Muslim Law of Pre-emption-Shufʿa. Compiled from the original Arabic authorities and containing the text and translation of the Fatâwâ-ī-ʿAlamgîrî and the Fatâwâ-i-Kâzî Khân* (Allahabad: Indian Press, 1931), 117–38.

property to the claimant by virtue of his right to pre-emption.

Compared to the other three Sunni schools of jurisprudence, the Hanafis granted the right to pre-emption to owners of adjacent properties.[144] When a neighbor's house came up for sale, they could ask for an "immediate demand" to acquire it and then follow up on the "demand with invocation" and "demand of possession." That the Rajputs showed considerable inclination in acquiring these adjacent properties shows they had the possibility to claim pre-emptory rights on Banaras plots. Moreover, Hanafi laws of pre-emption were key to the possibility of Rajput objectives within Timurid statecraft. They granted greater possibilities for transferring the ownership (*intiqal*) of "immovable property" (*ʿaqar*, land alone and not the built-up space as per Hanafi law, which should not be confused with our present-day Common law notion of immovable property that includes the built-up area) belonging to neighbors and co-owners.[145]

We can extrapolate that the Rajputs made these maps to carve out a precise idea for the following purposes. First, by demarcating the information on adjacent plots, the Rajputs had sufficient knowledge to contest any boundary disputes that arose. Since the Mughals lacked techniques to mark the precise co-ordinate points of land plots, the only way the *qazi*, alongside the city's political authority, the *kotwal*, and other witnesses could ascertain claims and adjudicate them was by surveying the area of the different plots in the surroundings. Based on the documents mentioning the area and the real survey of the plot, they had to assess the actual measurements of

[144] For a clarification on the classical Hanafi position and the Ottoman practice of pre-emption in Egypt, see Satoe Horii, "Pre-emption and Private Land Ownership in Modern Egypt: No Revival of Islamic Legal Tradition," *Islamic Law and Society* 18 (2011): 181–9. In particular, see Ibid., 182 for the four categories of people who had the right to pre-emption according to Hanafi jurisprudence.

[145] For pre-emption rights in Ottoman city neighborhoods, see Suraiya Faroqhi, *Men of Modest Substance: House Owners and House Property in Seventeenth-Century Ankara and Kayseri* (Cambridge: Cambridge University Press, 2002), 199–201.

lands each individual possessed. Since Mughal cities had no office of civil registrar to maintain urban property records, actual documents of landowners were the only way to know the validity of claims. Hence, the Rajputs maintained data on their neighbors. Second, to claim the right to pre-emption in the purchase of neighboring properties, owners had to act swiftly in case an adjacent plot was up for sale or transfer. Rajput *vakil*s ruminated on these matters to their masters in regular reports more than the masters sometimes bothered to care for the urgency of these matters given their multiple interests across various regions. These maps reveal the collection of as much information as possible in order to be ready to act on the availability of land. Third, the Rajputs were surveying properties in the neighborhoods with future long-term investment strategies in mind. Fourth, they maintained records of measurements of public property such as lanes and roads (*zuqaq*).[146] In case their neighbors encroached public land meant for free passage, it would be at the Rajputs' expense. If a neighbor on the opposite side of the lane annexed a part of the public road by extending his boundary wall, he effectively reduced the real road width. Given the difference between the nominal and the real width of the lane, the lane itself would move to the Rajput side at their expense since nobody knew the exact coordinate points of any properties. Whenever a public assessor had to verify these types of conflicts, all this information came in handy.

Property claims were a nexus of interests and calculations. These legal and adjudicatory methods have to be extrapolated by examining documents, practices, and rules of Islamic legal procedure to ascertain the functioning of the Mughal legal regime. However, through their legal

[146] For a rare study on the role of Islamic law on urban properties such as walls, pathways, public waters, and ruins, see Robert Brunschvig, "Urbanisme médiéval et droit musulman," in *Études d'islamologie* (Paris: Maisonneuve et Larose, 1976): 7–35.

socialization with Mughal officers' behavior and *qazi* procedures, they knew what was at stake. Moreover, the *vakil*s themselves did not have much cash in hand for making these transactions. The Rajputs often borrowed from private financiers and conducted their inter-urban transactions by bills of exchange. *Vakil*s complained that financiers failed to lend adequately on time; financial liquidity was a of prime concern as pre-emptory rights required full down payment. This was a basic condition in Islamic law for acquiring property on grounds of pre-emption.

The Expansion of Suburban Agglomerations: Imperial Privileges of *purajat*

Rajputs maintained *purajat* where they bought up land and property, which were further annotated by the *qazi*s. *Vakil* Pancholi Jagjivan Das wrote to the Jaipur ruler on 18 February 1707 just two weeks before Aurangzeb ʿAlamgir's death that the *raja* should order the *mutasaddi*s in his *purajat* in Aurangabad (most likely Jaisinghpura next to the Kham river and not far from Begumpura, where the Bibi ka maqbara is located) and Burhanpur *suba*s that they should abstain from an indulgent life or else the imperial court would retake *purajat* the back into *khalisa* control.[147] Jagjivan meant that the *purajat* could be escheated back again to Mughal domain unless the conditions under which they were granted were kept. However, this did not mean the ordinary populace settled in the *purajat* would themselves be evicted; only Rajput claims were retracted and rescinded while the Mughal exchequer received house rents in place of the Rajputs. This only strengthens our point that *purajat* too were imperial grants like *jagir*s and not lands subject to ownership (*tamlik*) claims. Therefore, they could be reconverted into *khalisa*. This was in conformity with the larger rationale of the process. The *umaraʾ* received privileges to facilitate the

[147] "Persian *vakil* report from Pancholi Jagjivan Das to Sawai Jai Singh II dated 26 dhu al-qaʿda 1118 AH (February 18, 1707)," Doc. no. 1388, *Persian Vakil Reports*, Bundle no. 1, Rajasthan State Archives, Bikaner.

settlement of populations in agglomerations. Since these privileges were meant for the public function of land use and the creation of agglomerations, it would have been absurd for the Rajputs to claim private ownership.

In the late seventeenth and the eighteenth centuries, the Rajputs were involved in several land transactions and transfers in Banaras, Mathura, and Vrindavan. In Mathura too, where they held *jagir*, the Amber Rajputs had prominent settlements like Jaisinghpura.[148] On 12 muharram 1107 AH/ August 13, 1695, Panna Mian, Bishan Singh's local employee contracted two property transfers through *baiʿnama* (sale deeds). The first concerned the sale of 52 *dirʿa*s of land in Kusak muhalla by a Mathura inhabitant, Khan Muhammad.[149] The purchase cost 10 Shahjahani rupees weighing 10 *masha*s 2 *ratti*s minted in the previous reign, which were still current. The silver weight of the coin was specified to avoid any disputes arising from the wear and tear of coin, but also as older coins circulated with a discounted value compared to freshly minted coins that had premium. On the same day, Panna Miyan bought another piece of land on Bishan Singh's behalf from Baqi Beg for 62 rupees 8 annas (the land measured 20 *dirʿa*s 8 *gira*s in length and 15 *dirʿa*s and ½ *gira* in width).[150] A few months earlier, on 1 rajab 1106 AH/February 5, 1695, Bishan Singh's employee had also bought 12 *biswa*s of agricultural land in Vrindavan for 20 Shahjahani rupees from Fatima Khanum. The *qazi* of Mathura, Ghulam Muhammad attested and notarized all

[148] For a detailed assessment of institutions in Brajbhum *pargana*, see Irfan Habib, "Dealing with multiplicity: Mughal administration in Braj Bhum under Aurangzeb (1659–1707)," *Studies in People's History* 3, no. 2. (2016): 151–64. For a history of the Jaipur rulers, see Jadunath Sarkar, *A History of Jaipur, c. 1503-1938* (Hyderabad: Orient Longman, 1994).

[149] Doc. no. 244, Gopal Narayan Bahura and Chandramani Singh (*Catalogue of Historical Documents in Kapad Dwara, Jaipur* (Amber-Jaipur: Jaigarh Public Charitable Trust, 1988). The *dirʿa* is an Arabic term of land measurement. According to William Irvine, it is an equivalent of *gaz-i ilahi*. William Irvine, *The Army of the Great Moghuls: Its Organization and Administration* (London: Luzac & Co., 1903), 217.

[150] Doc. no. 245, Kapad Dwara Collection.

these transactions in front of the parties and witnesses. Even as late as November 19, 1742, Jagannath Kurmi contracted a *qabala* (sale deed) for the transfer (*intiqal*) of land measured at 532.5 *ilahi gaz* to Pandit Rai, Sawai Jai Singh II's *vakil* in the Bibi Raji muhalla. They paid 1863 rupees 8 annas and the sale deed was signed by several Muslim individuals as well as *vakil*s.[151] A year later, they bought a single-story house in Bibi Raji muhalla for 480 rupees from Shaikh Ghulam on 1 rabiʿ al-thani 1156 AH/May 14, 1743.[152] The sale of *tamlik* lands based on Islamic legal procedures of *intiqal* (transfer) were common in the urban areas.

In a map on an unmarked *pura* on the banks of the Yamuna, called Budhyasanghapura (*budhasyangha purau talaka sarakara*), the Rajputs had noted the following types of lands that existed in its vicinity: *araja sari jami* [*zamin*] *ki gaja 200 basti raiti* [*raʿiyat*] *loga rahai* (the total area of land equaling 200 *gaz* where the commoners stay), i.e., a settlement of common folk. The Rajputs held *jami uftada* [*zamin-i uftada*] fallow cultivable land of 25 square *gaz*.[153] While demarcating the women's quarters (*janani rahasi*), they also noted the existence of a village under the Padishah, implying it was *khalisa* land. Agglomerations were surrounded by different types of lands classified for distinct land use purposes between the Mughals, their officers, and the commoners.

The Kacchawaha Rajputs alone controlled several *purajat* agglomerations in Banaras alongside their own personal *havel*is and buildings on the Manmandir Ghat as well as empty plots of land in Bibi Raji muhalla. They had *purajat* in Ilahabad (Jaisinghpura), Mathura (Bishanpura),

[151] Doc. no. 211, Kapad Dwara Collection.

[152] Doc. no. 248, Kapad Dwara Collection.

[153] Doc. no. 296, Kapad Dwara Collection.

Lahore, Peshawar, and Kabul towards the northwestern frontiers and Ujjain, Aurangabad (Jaishinghpura), Elichpur, and Burhanpur in the Deccan. The large urban imperial privileges Sawai Jai Singh received also corresponded to Mathura, Kol (Aligarh), Rewari, Bawal, Akbarabad, and Ujjain *pargana*s where he held *jagir*s outside his own *vatan jagir* (homeland fiefs) in Amber.[154] These agglomerations were named after the ruling Rajput patrons. Jaisinghpuras existed in Awadh, Delhi, Aurangabad, Burhanpur, Ujjain, and Elichpur. Moreover, they had privileges in Gopalganj (Bihar) on the banks of the Gandak river and nearby Baikunthpur. Several decades earlier, in 1639, they had received a grant of 200 *bigha*s of cultivable land in Baikunthpur *pargana* for the upkeep of *chatri* (tomb) of Raja Man Singh's mother.[155] Baikunthpur was known for the production of a variety of silk cloth called *alachah*. The English had shown keen interest since the 1620s on buying this variety the *bania*s sold in the Patna *bazaar*.[156] In the popular narrative on Mughal-Rajput relations, much is made of their matrimonial alliances. Notwithstanding their relevance, marriages are perhaps the least important as an explanatory factor for these relations based on loyalty and trust. In return for their loyalty of service, the Kacchawaha Rajputs received agglomeration privileges as much as *jagir*s around them notwithstanding their *vatan jagir* (homeland fief) in Rajasthan. The cosmopolitan spread of Rajput power and with it the mercantile and financial activities of *bania* merchants from Rajasthan were a product of Mughal imperial dynamics.

[154] Sumbul Halim Khan, "Sawai Jai Singh's Administration of the Territories Outside His Watan 1694-1750," *Proceedings of the Indian History Congress* 51 (1990): 246–53.

[155] S. Nurul Hasan, "Further Light on Zamindars under the Mughals—A Case Study of (Mirza) Raja Jai Singh under Shah Jahan," *Proceedings of the Indian History Congress* 39 (1978): 498.

[156] Sir R. C. Temple, "Documents relating to the First English Commercial Mission to Patna, 1620–1621," *Indian Antiquary: A Journal of Oriental Research* 43 (1914): 76.

The Kacchawaha Rajputs owned the real estate acquired under Mughal rule in the 1600s even as late as the early twentieth century. They routinely rented their buildings, plots, and shops on the Manmandir Ghat in Banaras as well as Jaisinghpura in Ilahabad to Deshastha Brahmins who had been settled there during Maratha control. In the years following the transfer of power to the British Crown in 1858, Rajputs got their *purajat* and *haveli*s reconfirmed by British district commissioners who gave them absolute property rights over them. The aftereffects of Mughal benefits were many, least of which were earnings they reaped for these elite communities well into British colonial rule, The *navisht kiraya* (rent deeds) from the nineteenth century attest to this reality. Ram Purohit *brahman deshvali* (Deshastha Brahmin) rented two plots for 2 rupees 8 annas per year from Ratan Singh, the *vakil* who contracted on behalf of Ram Singh II (1835–1880).[157] In 1859, the banks of the Manmandir Ghat were leased for a year to Sadal *ahir* and Ram Jivan *teli* for setting up shops. They also contracted the rights to levy taxes on the boats arriving at Manmandir for a one-year lease holding (*ijara*) worth 10 rupees per annum.[158] A few years later, a resident of Jaisinghpura in Ilahabad, Husain Bakhsh rented a *pakka* house near the *kotwali* of Manmandir muhalla for 4 rupees per annum.[159] In 1891, Rama, s/o Thakurdas brahman paid 3 rupees per annum to rent a *haveli* at the entrance of Manmandir.[160] In 1865, Devidin, s/o Badal *baqqal* had rented an empty plot of land in the same neighborhood for one rupee per annum. In Agra too, Belanganj (a food grain *mandi* that the Mughals called *ganj*) was located on the Yamuna banks opposite Iʿtimad al-daula's tomb. In its vicinity, an agglomeration called Bhairon muhalla

[157] Doc. no. 471, Kapad Dwara Collection.

[158] Doc. no. 418, Kapad Dwara Collection.

[159] Doc. no. 420, Kapad Dwara Collection.

[160] Doc. no. 417, Kapad Dwara Collection.

(named after the Bhairon temple that survives to this day) belonged to the Rajputs. In 1863, they sold a two-storied *pakka haveli* with two courtyards, verandah, shops, and two *kutcha* houses in Bhairon muhalla to Seth Lakshmi Chand and Govind Das, s/o Maniram for 25,000 rupees. To this day, many road transport companies plying to Jaipur operate from Belanganj attesting to the likely transfer of properties to communities and individuals with networks and links to Rajasthan.

From the documents preserved in the Kapad Dwara at the Jaipur City Palace and the reports that the *vakil*s sent in Persian and Rajasthani, we know all imperial privileges held in various cities from Kabul to Aurangabad were petitioned for reapproval to Farrukh Siyar in 1715 and Muhammad Shah in 1720 upon their respective accessions. These requests came in a bunch in December 19 and another set in January.[161] The Mughal chancery issued *parvana*s and *kharita*s reconfirming privileges their predecessors gave. This procedure proves that the new Padishah in virtue of his appointment as the new *imam* had to reapprove all privileges and personal grants for them to continue to possess legal validity. In a Rajasthani *vakil* report that Pancholi Jagjivan Das wrote to Jai Singh II's *divan*, Shah Nainsukh in September 1712, a few months after Jahandar Shah's enthronement in March 1712 (Jahandar Shah would be deposed in January 1713 and strangled to death by his nephew, Farrukh Siyar), the *vakil* noted various complications involved in the reapproval of *purajat* that also involved other transactionary affairs such as *ijara* rights. All of these were subject to satisfactory performance of other officer duties assigned to him:

> *hukama* [*hukm*] *ayo jum purajata ki sanada* [*sanad*] *aba taka taiyara* [*taiyar*] *karaya hujura* [*huzur*] *na bheji sum avai taiyara kara hujura bhejaji sum sri Maharaja ji salamata*

[161] Doc. nos. 1-12, Kapad Dwara Collection, For Rajput relations with the Mughals in the eighteenth century, see Harish Chandra Tikkiwal, *Jaipur and the Later Mughals (1707–1803 A.D.)* (Jaipur: Hema Printers, 1974).

[*salamat*]. *purajata ka paravana* [*parvana*] *dafatara* [*daftar*] *sum tayara karaya pana Raja Sabha Chanda atakaya hai kahe hai tuma sambhara sum thano uthavogai nava paravana dege sum aba to yamsum sambhara ka ijara* [*ijara*] *ki radabadala* [*radd u badal*] *dali hai jo ya radabadala thahurau to paravana sitaba hujura bheju hum ji*[162]

The order has arrived that the *sanad*s of the *purajat* have been prepared; however, your Lord's [Jai Singh II] court has not sent them. I beg you to do the needed and send them. Health and prosperity to Sri Maharaja ji! The *parvana*s of the *purajat* have been prepared by the office; however, Raja Sabha Chand has blocked them. He says that a new *parvana* will be issued once the Sambhar matter is settled. As of now, the deliberation on granting the *ijara* in Sambhar has been kept pending until Your Highness sends a *parvana* in the meantime.

These negotiations were a continuation of conflicts that had dragged on for over a year since 1711. Pancholi Jagjivan Das and Divan Bikhari Das had anxiously written to Jai Singh II that the Sikhs had gained the upper hand in Lahore. In March 1711, difficulties persisted at the Mughal court too. Daʿud Khan had not yet handed over Jaisinghpura's charge to Jai Singh's clerks (*mutasaddi*) in Aurangabad. The *vakil*s were pursuing this matter with the *Amir al-umaraʾ* and the *divan*. Yet, their eyes were focused on threats to their *purajat* as far as Punjab. By 1712, Sikh skirmishes threatened their properties in Lahore and Peshawar.

[162] "Rajasthani *vakil* report from Pancholi Jagjivan Das to Sawai Jai Singh II dated asvin badi 4, 1769 VS (September 8, 1712)," Old no. 154, Rajasthan State Archives, Bikaner, in G. D. Sharma, ed., *Vakil Reports Maharajgan (1693-1712 A.D.)* (New Delhi: Radha Krishna Prakashan, 1986), 287. I have included Perso-Arabic terms in parentheses. My translation.

In less than fifteen years after Aurangzeb ʿAlamgir's death, six Padishahs ascended the throne and lost it; any *amir* or *mansabdar* would be annoyed getting these reapprovals again and again even if it were a mere formality, which was not always the case. Even such an elementary lack of stability was a major headache in Mughal property claims. One long serving Padishah was better for property claims than several in a short interval. An examination of when such requests stopped coming from different quarters and under what political circumstances can help realize how Mughal suzerainty was gradually drained of its imperial power to the extent that few cared beyond paying a lip-service *nazrana* and *pishkash* by the late eighteenth century.[163] The Amber Rajputs who had been close associates and beneficiaries were one of the few loyal allies well into the 1760s.

To the South of Hindustan, Malwa on the way to Khandesh and the Deccan was situated at the crossroads between Ajmer *suba* and the Bundelkhand region but also the trade routes from Gujarat and the Arabian seaports. While landlocked, Malwa, with its nodal point at Ujjain, formed a central region of connectivity between the different parts of the subcontinent. After his appointment as *subadar* of Malwa in 1713, Sawai Jai Singh II got a plan of Jaisinghpura in Ujjain prepared. A note adds that Jaisinghpura, unlike the previous *pura* was located within the premises of the *baga patasahi* [*bagh-i padishahi*] or "the imperial gardens." Imperial gardens being state lands, Rajput properties within them did not become their *tamlik*. This was another sub-category of urban imperial privilege granted for the exclusive use of the Rajput *rajas*. The local *divan*, Muhammad was expected to hand over the lands to the Rajputs.[164] Between the Rudrasagar lake

[163] For one late Mughal prince, Mirza ʿAli Bakht Azfari's (1759–1818) fate, see Muzaffar Alam and Sanjay Subrahmanyam, "Envisioning Power: The Political Thought of a Late Eighteenth-Century Mughal Prince," *Indian Economic and Social History Review* 43, no. 2 (2006): 131–61.

[164] Doc. no. 62, Kapad Dwara Collection.

close to the Mahakalesvara Temple and the Kshipra river, a Muslim settlement, Begumpura had already come up. Saiyid Mukhtar Khan had laid out a garden in this agglomeration in 1678. During his governorship of the province twenty years later, Mukhtar Khan's servant Khwaja Sahib constructed a step-well (*baori*). In 1700, Mukhtar Khan also built a *madrasa* for the local Muslim community's benefit.[165]

In a Jaipuri map of Ujjain from the 1720s, the cadastral survey demarcates not only the Rajput land but also those the Marathas held. By the 1720s, within the *pura* controlled by the Amber Rajputs in Ujjain, twenty *haveli*s belonged to clerical and business communities such as *kayastha*s and *mahajan*s including one Trilok Chand.[166] Indeed the Mughal imperial chancery had ratified a *parvana* issuing a *jagir* worth 19,687 *dam*s in Malwa to Sawai Jai Singh II for inhabiting this new *pura* in Ujjain during Farrukh Siyar's reign on September 23, 1716. The same privilege was renewed after Muhammad Shah's accession on March 23, 1720.[167] Perhaps, the *jagir* revenue was used for the construction of the agglomeration. It took over two months to get this approval. In early January 1720, the Rajput *vakil*s at court had petitioned and Muhammad Shah's officers had issued a temporary *parvana* on January 21, 1720 that the *purajat* in Malwa were not to be interfered with.[168] Moreover, the map of Ujjain indicates the Rajput land as *vidyakunda sum pure tarafa ki jami biga 30* (30 *bigha*s in total on the entire side of Vidyakund). Furthermore, it adds, *milaki to kahai chai ya jami* [*zamin*] *hamari hai*, claiming additional lands. Interestingly, the scribe

[165] Inscription nos. 764; 766-7 in Syed Abdur Rahim, *Arabic, Persian and Urdu Inscriptions of Central India* (New Delhi: Sundeep Prakashan, 2000), 126–7.

[166] Map of Ujjain, Map no. 171, Gopal Narayan Bahura and Chandramani Singh, *Catalogue of Historical Documents in Kapad Dwara, Jaipur. Part II, Maps and Plans* (Amber-Jaipur: Jaigarh Public Charitable Trust, 1990).

[167] Doc. nos. 148-9, Kapad Dwara Collection.

[168] Doc. no. 202, Kapad Dwara Collection.

noted the presence of a forceful land title dispute with the Marathas (*barhata*) for 30 *bigha*s of land: *jabardasti jhagado tisa biga ki* (oppressive dispute for thirty *bigha*s). Another note says that a piece of land demarcated as *milaka ki jamina* [*tamlik*] was available for purchase. Perhaps, such maps were prepared for assessing the overall existing claims as well as listing contested properties. Just south of Malwa, the Marathas had been giving Mughals a tough challenge in Khandesh by the 1690s. In 1723, Muhammad Shah had to invade Malwa that was prone to Maratha incursions.[169] The Maratha chief, Shahu Bhonsle's (r. 1708–1749) *vakil* Dadu Rao made several agreements (*ʿahdnama*) accompanied by surety bonds (*navisht*) with Sawai Jai Singh II in the early 1730s promising him that the Marathas would still respect Rajput claims in Malwa *suba*.[170] Nevertheless, the Marathas were fast gaining foothold in Ujjain's city-center even though the Mughals in connivance with the Rajputs tried their best to prevent that possibility.

Campaigning and warring even within the Mughal internal frontiers (i.e., the frontiers of Hindustan in geo-political terms) were also opportunities for construction as happened in Bundelkhand. A young sixteen-year-old Aurangzeb nominally commanded the Mughal forces attacking Chanderi in 1635. Around this time, Shah Jahan had troubles with the Orchha ruler, Jujhar Singh as much as the Gond chiefs of Chanda in the heavily forested Gondwana who had not accepted Mughal suzerainty.[171] Later on, the main mosque in Chanderi in Madhya Pradesh, nowadays called Qaziyon ki masjid, was constructed on garden land belonging to the local chief, Durjan Singh Bundela. Despite his Rajput lineage, he was treated with a lower rank of *sahib-i*

[169] See Stewart Gordon, and John F. Richards, "Kinship and Pargana in Eighteenth Century Khandesh," *Indian Economic and Social History Review* 22, no. 4 (1985): 371–97.

[170] Doc. nos. 290; 292, Kapad Dwara Collection.

[171] Gérard Fussman et al., *Chanderi, naissance et déclin d'une Qasba: Chanderi du Xe au XVIIIe siècle*, vol. 1 (Paris: Collège de France, 2003), 210.

jagir, i.e., *jagirdar* and not a *raja*. He donated the mosque land in exchange for land allotted elsewhere.[172] Since Chanderi was *jagir* land assigned to Durjan Singh out of the *bayt al-mal*, the Mughals still retained their prerogative to demand parts of the *jagir* territories for the construction of the mosque. These land swaps ensured no loss to either party concerned; the Sultanate was not grabbing land but compensated him. The local Jain Chaudhari *zamindar*s enjoyed Aurangzeb ʿAlamgir's close favors despite being below Durjan Singh's rank of *jagirdar*. In 1633, their ancestor, Chaudhari Chitradas had built several Jain temples in Chanderi.[173] Perhaps, these networks facilitated negotiations and agreements between the different parties. Randaula Khan, who had been deputed to fight the Chandas even as late as 1671 built a mosque on his victorious way in nearby Dhamoni.[174] The inscription of the mosque declared that "he had descended to the plains of Dhamoni" (*kard dar hamun-i dhamuni nuzul*).[175] The surrounding lands were given to ʿAbd Allah, son of Shaikh Raji Muhammad until the end of time (*haqq u milk-i u ast ta baqi bud dar zaman*), i.e., converted to *tamlik* lands for the upkeep of the mosque. In Dewas, not far from Indore, Shaikh ʿAbd al-Salam, the local *qanungo* laid out a *pura* with a garden, bridge, mosque and ʿ*idgah* when Jahandar Shah, Aurangzeb ʿAlamgir's grandson held the jurisdiction of these territories as his *jagir* in the early 1700s.[176] All these architectural monuments were properties too; they were guaranteed through different legal rules and provisions of Islamic law. While overlapping jurisdictions of *jagirdar*s, *subadar*s, and *faujdar*s served the administrative-fiscal-

[172] Inscription no. 174 in Rahim, *Arabic*, 40.

[173] Fussman et al., *Chanderi*, 215.

[174] G. Yazdani, "Two Persian Inscriptions from Dhamoni, Saugor District," in *Epigraphia Indo-Moslemica 1937–38* (Calcutta: Government of India Press, 1941), 34–7.

[175] Ibid., 36.

[176] Inscription nos. 220-1 in Rahim, *Arabic*, 45–6.

militaristic purposes of Timurid statecraft, within them lay multiple types of land holding based on the legal classification of land use. It wouldn't be an exaggeration to say that every stone laid in the Mughal realms was built on the foundation stone of diverse legal procedures they followed and adhered to. That legal commitment was a matter of trust. The guarantee of promises to elite warrior groups was also a product of friction that militaristic dominance and multiple types of claims for different logics of statecraft inevitably generated.

Further south in the Deccan, Beed in today's Maharashtra had already witnessed the construction of the *qazi*'s mosque by Nawab Jan Sipar Khan during Jahangir's reign in 1626–27. Sardar Khan, the *faujdar* and Ikhtiyar khan, the *darugha-yi ʿimarat* (superintendent of construction) renovated the mosque and laid out a stone flooring and a *pakka* pulpit in 1680. An inscription at the entrance of the Jamaʿ masjid-i ʿalamgiri built not far from the banks of the Bindusara river mentions that ʿUmdat al-Mulk Nawab Ghazi al-Din Khan Firuz Jung, the *subadar*, constructed the fort in 1115 AH/1703–4. On the other bank of the river, Haji Sadr Shah, the *naʾib-i subadar* (deputy *subadar*) laid out an *ʿidgah* and the *pura* of Ghazi al-Din Nagar, nowadays known as Islampura.[177] According to an earlier inscription from the *puranapura* (old city) dated 1113 AH/1701–2, Firuz Jung held *faujdari* responsibilities of the territories from *Dar al-zafar* Bijapur to *Khujasta bunyad* Aurangabad. The inscription mentions that he constructed and settled an agglomeration with the assistance of local elites, Siddhaji Deshmukh, Dhondhaji Deshpande, and Sambhu Shih.[178]

[177] Inscription no. 568 in Ziyaud-Din A. Desai, *Arabic, Persian and Urdu Inscriptions of West India: A Topographical List* (New Delhi: Sundeep Prakashan, 1999), 59.

[178] Inscription no. 566, in Ibidem.

In the late seventeenth century, Beed attracted several members of the Khatri caste from Khushab in present-day Punjab in Pakistan. Rupchand's son, Ane Rai, *ʿurf* (surname) Nath, was a well-known resident. His mother added a well and a pathway (*sabil*) outside the *dargah* of Shahinshah Wali. A few years earlier, during the *dargah*'s renovations, Haji Sadr Shah had added a mosque.[179] Another Khatri from Khushab, Dayanat Ram constructed a well in 1710. As early as the 1620s, what is today called Qaziyon ki masjid (*qazi*'s mosque) had been built. It is likely Beed's *qazi* officiated from this place. In 1710–11, the Khatris too settled an agglomeration. In the 1720s, Beed's *qazi*, Muhammad Rukn al-Din who hailed from Mehsi *qasba* in Bihar built a mosque. His brother Muhammad Taj al-Din supervised the construction. Beed had been an important commercial center on the highway lying between Bijapur and Aurangabad.[180] On the way, to the south of Aurangabad, in Paithan (Pattan in Persian)—the former Rashtrakuta capital Pratisthana on the banks of the Godavari river, Sanjar Beg, Wis Beg's son had endowed a mosque and a *hammam* and settled a *pura* in its vicinities in 1669–70.[181] Madar Sahib ki masjid had been built by the Muslims of the *qasba* in 1621.[182] The proliferation of the mosques across north and central India as well as Deccan often called Qaziyon ki masjid today likely implies *qazi*s sat there. The *qazi* in Islamic law was expected to sit (*majlis*) in a prominent part of the city-center such as a mosque, bazaar, or a *madrasa* for easy accessibility and public view.

[179] Inscription nos. 572-3, in Ibid., 60.

[180] For the Sufi shrines and the religious context in the region, see Nile Green, *Making Space: Sufis and Settlers in Early Modern India* (New Delhi: Oxford University Press, 2012), 185–96.

[181] Inscription nos. 1688-9 in Desai, *Arabic*, 182.

[182] Inscription no. 1685 in Ibidem.

Daʾud Khan Quraishi of 5000 *zat* rank and governor of Ilahabad in 1670, who had sided earlier with Dara Shukoh during the battle of succession, built Daudnagar near Aurangabad in Bihar. The French jeweler, Jean-Baptiste Tavernier had spent time in the agglomeration's *sarai* during his travels.[183] As we saw earlier, the Padishah's superintendent of petitions, Bakhtawar Khan too sponsored Bakhtawarpura outside Delhi. The Mughals sub-contracted tasks of urban settlement. In Mughal service, the officers were expected to pay back by undertaking the construction and the maintenance of agglomerations in cities and *qasba*s as a means of promoting broader needs of public utility.

Moreover, the settlement of the *ʿulamaʾ* too contributed to urbanization. In 1695, the *ʿulamaʾ* of Firangi Mahall received a *haveli* and the adjacent territories. Aurangzeb ʿAlamgir granted lands sequestered from a European merchant (*firangi* meaning Frank) that as there was no claimant and it was vacant land open to create possessionary claims without legal hurdles.[184] In 1692, Mulla Qutb al-Din, a well-known learned scholar was murdered in his *madrasa* in Sihali not far from Lucknow while teaching by the ʿUsmani *zamindar*s. They had also burnt down his library.[185] Mulla's four sons were granted the Firangi Mahall as compensation. What has gone completely unnoticed is that the grant of urban *haveli* and adjacent garden property as a privilege secured their claims in a firmer footing than a simple *madad-i maʿash*. The latter was merely a loan (*ʿariya*) of land to accrue regular incomes. Most likely, the *ʿulamaʾ* were still given agrarian

[183] See Nripendra Kumar Shrivastva, "The Career of Daud Khan Quraishi and His Conquest of Palamau," *Proceedings of the Indian History Congress* 60 (1999): 306–14.

[184] Rizvi, *History of Isna'*, 209–10. For the history of the *madrasa*, see Francis Robinson, *The 'Ulama of Farangi Mahall and Islamic Culture in South Asia* (New Delhi: Permanent Black, 2001). For the biographies of the *ʿulamaʾ*, see Muhammad Inayat Allah Ansari, *Tazkira-yi ʿulamaʾ-i farangi mahall* (Lucknow: s.n., s.d.).

[185] Robinson, *The 'Ulama*, 44–6.

lands for income purposes.[186] However, the *haveli* land itself became their long-term immovable assets. Here, they could nurture the famed *madrasa* without threats and harassment of the local *zamindar*s. A *haveli* and a horse stable stood at the center of the original land area that was rebuilt in the 1890s. Mulla ʿAbd al-Aziz and his colleagues occupied the quarters nearby, which have been vastly extended today. In Gorakhpur, Aurangzeb granted 592 *bigha*s of land for a *haveli* in 1669 to Shaikh Habib Allah Khatib as a favor in return for officiating as *khatib* and *imam* of the local mosque. Mohan Das, the *vaqiʿa navis* annotated the release of these lands the *sadr*, Rizavi Khan Bukhari had duly endorsed and signed.[187] These lands would have constituted a combination of *madad-i maʿash* with permission to construct edifices in the suburbs of Gorakhpur. Lands for the construction of mansions and settlements were disbursed to diverse groups.

Documenting these discrete imperial decisions and privileges that contributed to urban growth, we have foreshadowed the mixed nature of urban settlement as well as the extent of imperial reach in the seats of power, *purajat*, and *qasba*s. Unlike rural areas that barely came under direct Mughal radar, the regulation of urban life was key to symbolic and real demonstration of imperial power. Urban growth across the subcontinent was legally monitored through graded types of land use and masterplans as we will see in the next section. Cities were not free spaces of social circulation but state-regulated formations with stratified class, caste, and religious interests.

Often, many *purajat* include inscriptions made in Persian alongside Marathi, Telugu, or Hindavi *tarjama* inscribed on them. These were forms of expressing Mughal imperial suzerainty,

[186] Aurangzeb ʿAlamgir's *farman* granting these rights was still available in the early part of the twentieth century. Unfortunately, I have been unable to trace its whereabouts.

[187] "*Farman* issued by Aurangzeb ʿAlamgir," Doc. no. 2154, National Archives of India, New Delhi.

its achievements, and benevolent functions (*maslaha*) to the commoners in the vernaculars that went beyond the courtly cosmopolitan. These inscriptions often contain hybrid calendrical systems and dating in *hijri*, *fasli* (north and south Indian variants), *vikrama*, *saka* and the *julus* (regnal year). Marathi Inscriptions contained the *san* in Arabic while also including the *saka*. In Beed, the Marathi inscription of the founding of Ghazi al-Din pura began with *patasa alamagira salamata* (Hail! Padishah ʿAlamgir) and concluded with *sake 1625 subhanu nama samvatsare asina suda padava sana 1113* (in 1625 of the *saka* era, the year *subhanu* [of the Indic sixty-year cycle], the month of *asvin*, the first day of the moon's rising phase [reckoned in the *amanta* style], the year [equivalent to] 1113 AH).[188] The corresponding Persian inscription was more pompous about founding the *pura-yi mubarak-i Ghazi al-Din*. Telugu inscriptions in Golkonda too were composed with the *hijri* year transcribed *verbatim* from the Arabic into Telugu transcription. When Randaula Khan was the *jagirdar* of Shahabad in Rajasthan, Aurangzeb ʿAlamgir had issued a *farman* exempting the traders and Brahmins (*mahajanan u zunnardaran byapariyan vagaira-yi qasba-yi Shahbad*) of several taxes such as *siyar*, *zakat*, *bataʾi*, *khont*, *tolaʾi*, and *kotwali* in 1090 AH/1679. This order inscribed in the city-center concluded with a warning that the curse of God would fall on any violators: *musalmanan ra khuda darmiyan zunnardaran ra ram darmiyan* ("[the curse of]

[188] G. Yazdani, "Inscriptions from the Biḍ (Bhīr) District," in *Epigraphia Indica: Arabic and Persian Supplement (In Continuation of Epigraphia Indo-Moslemica) 1921–30* (New Delhi: Archaeological Survey of India, 1987), 20. The terms *san*/*sana* from the Arabic *sana* (year) were used primarily for the *hijra* year. The aftereffects of this practice still survive in administrative usage in many Indian regional languages where *san* is used only for the *isavi* (from ʿIsa, Arabic for Jesus), i.e., the Common Era. Centuries of use of Islamic and Persian calendars had made such terms for administrative dates represent a kind of secular calendar that the *saka* or the *vikrama* eras rarely were.

Khuda on the Muslims and that of Rama on the Brahmins").[189] None of these were contradictions of the Mughal Empire but the hallmarks of its great diversity.[190]

Forms of urban agglomerations were found across the subcontinent in the larger cities of Akbarabad (Agra), Shahjahanabad (Delhi), Lahore, Kabul, Aurangabad, Burhanpur as well as smaller *qasba*s like Elichpur, Paithan, Beed, and Balapur in the Deccan; Pattan and Baroda in Gujarat; Nagaur, Mehrta, and Ajmer in Rajasthan; and *qasba*s throughout the Indo-Gangetic plains. Whatever the financial and military implications of Mughal expansion to the Deccan, urbanization was at the core of the highways from Hindustan to the Deccan. Empirical dots have to be plotted together to map the shifts along several highways within the Mughal Empire. One was the *daksinapatha*—the great southern way, which incidentally gave the name *Dakkhan* (Deccan). This trade and military route—long traversed since ancient times, was the topographical intersection of the subcontinent beginning in Patna and Banaras, traversing Ujjain and Vidisha on its way culminating at Paithan on the Godavari river. Another route had emerged since the 1200s when Delhi had become the focal point of Hindustan's power. From the Yamuna doab, passing through Gwalior, Chanderi, and Ujjain, it too culminated on the banks of the Godavari. A short way before reaching Paithan, a new city had come up: *Khujasta bunyad* (Auspicious Foundation), Aurangabad bore the name of Prince Aurangzeb who expanded it during his governorship in the Deccan. From Delhi, another route lay towards the Arabian Sea passing through Ajmer, Udaipur,

[189] M. F. Khan, "Three Grants of the Time of Aurangzeb from Kota District," in *Epigraphia Indica: Arabic and Persian Supplement (In Continuation of Epigraphia Indo-Moslemica) 1968 and 1969* (New Delhi: Archaeological Survey of India, 1987), 70.

[190] When Aurangzeb ʿAlamgir desired rationalizing his reign according to the *hijra* calendar, that was a matter for the courtly culture of the "chosen few" (*khass*) and not meant for the needs of the commoners (*ʿamm*).

Baroda, Patan, and Ahmedabad that bifurcated towards the ports of Surat, Bharuch, and Thatta.[191] Of course, a riverine and land route had existed from Afghanistan to Bengal traversing the great cities of Kabul, Peshawar, Lahore, Delhi, Agra, Banaras, Ilahabad, Patna, Murshidabad, and Dhaka in the Indo-Gangetic plains—the ancient *uttarapatha*—the great northern way as much as Sher Shah's Grand Trunk road. All these great routes and their sub-routes that branched off and connected with each other—products of the region's civilizational phenomenon of millennia of human settlements and ecological systems—larger than any empire's travails, formed the roots of urban expansion in the 1600s and the early 1700s.[192] This trend was not weakened until colonial expansion along the nexus of the three maritime cities of Calcutta, Bombay, and Madras broke the hegemony of the hinterland in the early nineteenth century.[193]

The assessment of these regional processes of urbanization goes together with the cosmopolitan nature of making agglomeration settlements to officers across Mughal realms.[194] These micro-zones of urbanization and pockets of agrarian tracts connected with cities and *qasba*s along the great trade routes, dynamized the internal economy within the subcontinent. Urban settlement, especially, of artisan populations expanded in tandem with rural commercialization.[195]

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[191] See Sanjay Subrahmanyam, "The Hidden Face of Surat: Reflections on a Cosmopolitan Indian Ocean Centre, 1540-1750," *Journal of the Economic and Social History of the Orient* 61 (2018): 205–55.

[192] For the environmental aspects of the Gangetic plains, see Murari Kumar Jha, "Migration, Settlement, and State Formation in the Ganga Plain: A Historical Geographic Perspective," *Journal of the Economic and Social History of the Orient* 57 (2014): 587–627. For the environmental history of the second millennium, see Sumit Guha, *Environment and Ethnicity in India, 1200–1991* (Cambridge: Cambridge University Press, 1999).

[193] For the shift in the centers of *hundi* exchange and their routes of transit in the nineteenth century, see Rajat Kanta Ray, *Entrepreneurship and Industry in India, 1800–1947* (New Delhi: Oxford University Press, 1994), 13 ff.

[194] Makrand Mehta, *Indian Merchants and Entrepreneurs in Historical Perspective: With Special reference to shroffs of Gujarat, 17th to 19th Centuries* (Delhi: Academic Foundation, 1991).

[195] B. R. Grover, "An Integrated Pattern of Commercial Life in the Rural Society of North India during the 17th-18th Centuries," *Proceedings of the Indian Historical Records Commission*, 37th Session (1966): 121–53.

The artisanal and manufacturing basis of the hinterland[196] cannot be divorced from the legal basis of Mughal property regimes in the urban spaces. Agrarian commercialization, investments in agglomerations, and the settlement of artisanal groups created economic disequilibria too. Weavers of the Koshti caste had emigrated from Sarangpur near Ujjain due to *begar* or forced labor. Aurangzeb ʿAlamgir, hearing of forced labor, banned *begar* and prominently issued an order to this effect inscribed near the *Buland darwaza*.[197] In Vidisha, the Kolis were exempted from *begar* by imperial officers.[198] In 1673, Aurangzeb ʿAlamgir stopped the common practice of forcing grain merchants to buy *khalisa* produce at a rate higher than the going market price in several towns including Bhav.[199] *Khalisa*, though domain lands, did not allow the Mughal chancery to hamper the interests of *tijarat* (commerce) within the realms.

The Mughals had limited options in managing the needs of urban dwellers. The *umaraʾ* invested in urban properties, the renovation of structures, the construction of mosques, *khanqahs*, temples, *mutts* as much as the urban settlements of diverse religious, caste, clan, and professional groups. Each *pura* contained several *haveli*s and hutments, quarters for servants and populations as well as place probably for *karkhana*s and gardens and other kinds of semi-public spaces where

[196] Frank Perlin, "Proto-Industrialization and Pre-Colonial South Asia," *Past and Present* 98 (1983): 30–95. Also see Hameeda Khatoon Naqvi, "Progress of Urbanization in the United Provinces, 1550–1800," *Journal of the Economic and Social History of the Orient* 10, no. 1 (1967): 81–101; Hameeda Khatoon Naqvi, *Mughal Hindustan, Cities and Industries, 1556–1803* (Karachi: National Book Foundation, 1974); Stephen P. Blake, "The Hierarchy of Central Places in North India during the Mughal Period of Indian History," *South Asia: Journal of South Asian Studies* 6, no. 1 (1983): 1–32; Stephen P. Blake, "The Urban Economy in Premodern Muslim India: Shahjahanabad, 1639-1739," *Modern Asian Studies* 21, no. 3 (1987): 447–71. For Awadhi cities in the last quarter of the eighteenth century, see Christopher A. Bayly, *Rulers, Townsmen and Bazaars: North Indian Society in the Age of British Expansion, 1770-1870* (Cambridge: Cambridge University Press, 1983), 111 ff.

[197] Inscription no. 650 in Rahim, *Arabic*, 109.

[198] Inscription no. 813 in Ibid., 132.

[199] Inscription no. 648 in Ibid., 109.

the household domesticities continued. They perhaps settled communities from their *jagir*s or nearby villages and likely had caste and religious groups necessary for the social functioning of agglomerations. Neighborhoods and agglomerations were internally cohesive in religious and caste composition as these spaces were more than functional. Shrines, temples, and mosques were vital for the public expression of piety and ritual. Moreover, a settlement would have involved the construction of houses and making a layout with basic amenities such as gardens, roads, and mosques and temples that were paid for by the grantee; this enhanced their social capital, self-esteem, and elite networks beyond their regions of origin. The architectural and spatial configurations of these towns need to be studied through their socio-economic profiles.

In the late seventeenth and early eighteenth centuries, internal trade expanded along the riverine Indo-Gangetic plains and Central India.[200] While external demand for textile was favorable for traders, *karkhana*s, and weavers, their settlements in agglomerations and suburban localities increased the financial clout and prestige of the *umara'*. A further point requires our attention. The late seventeenth century already witnessed the expansion of Marwari and *bania* networks who financed local and Rajput groups. Alongside, *bania* properties in *purajat* illustrate their close-knit ties to Rajputs. Commerce in artisanal wares throughout the hinterland and the financing of trading networks had emerged well before the *bazaar* economy in the early colonial period.[201] Rajput *purajat* were coordinated settlements for transregional commercialization of

[200] John F. Richards, "The Seventeenth-Century Crisis in South Asia," *Modern Asian Studies* 24, no. 4 (1990): 625–38.

[201] For an analysis of the colonial *bazaar* economy, see Rajat Kanta Ray, "Asian Capital in the Age of European Domination: The Rise of the Bazaar, 1800–1914," *Modern Asian Studies* 29, no. 3 (1995): 449–554. Unfortunately, the large Rajput chancery records alongside Rajput activities across the subcontinent under Mughal service from the seventeenth and eighteenth centuries have been overlooked in understanding the creation of cosmopolitan networks of Rajasthani trading and financial groups. These networks that predate the colonial *bazaar* had already laid the foundations for the circulation of commerce and finance. Under the colonial regime, the *bazaar* became a cog in the

regional manufactures of textile in a period of urbanization and agrarian expansion in the Mughal as much as Rajasthan.

From the legal and documentary angles, imperial privileges of urban lands necessitated cadastral surveys of plots. The privileges issued to the *umara'*, the *khanazad*s, and the Rajputs, their wealth, interests, and claims were managed by their legal agents and representatives at court, the *vakil*s. While hardly any documentation of the Mughal *umara'* survives—owing perhaps to their families losing out under colonial rule, the Rajput records preserve in great depth the results of Mughal imperial benefits they received in the seventeenth and eighteenth centuries.

The Mughals sub-contracted urban settlements to their elite and thus created opportunities for urban expansion. The doubling of urban population from 5 per cent in 1600 to 8-10 per cent by 1800[202] must be largely imputed (adjusting for natural population growth) to the spread of *purajat* where new populations were settled. As our discussion has shown, urbanization was part of more calculated operations of interest, trade, caste and religious affiliation, and prestige to encourage their growth through imperial incentives (akin to today's tax breaks) and not free circulation and settlement based on pull factors (artisanal expansion) or push factors such as famine-induced migration, which remained limited. Since there was no open labor market and generalized demand for wage labor, it is not as if rural populations would have settled freely. More importantly, finding them housing, employment, and basic necessities, especially in a society with caste/religious cleavages of inhabitation, ritual pollution and untouchability, marriage and kinship

wheel of larger financial systems unlike the precolonial period when it had been a much more autonomous circulatory regime.

[202] Sanjay Subrahmanyam and Christopher A. Bayly, "Portfolio Capitalists and the Political Economy of Early Modern India," *Indian Economic and Social History Review* 25, no. 4 (1988): 413.

relations of households, needs of religious edifices like mosques and temples would have led to group movements supported by networks of local chiefs, merchants, and warrior groups. The *munsarim-i purajat* appointed by the grantee settled these agglomerations. Such analysis also leads us to move beyond the large camp-cities and capitals to smaller *qasba*s where communities from the regional hinterland settled unlike the Mughal elite that moved in the Persianate cosmopolitan world. Even *qazi*s in small towns like Beed came from distant places like Bihar as they had been appointed by the court and were attached to different circulatory regimes of courtiers and officers. The courtly appointments and their elite *émigré*s were cosmopolitan drawing from Central Asia, Iran, and, even, the Middle East while group migrations remained regionalized within a two-tier reality of urban population settlement in the vast domains of the Mughal Empire.

The Hanafi Concept of *ʿaqar* (immovable property) and the Mughal Urban Masterplan

The study of Mughal cities has been heavily tilted towards imperial walled cities to the complete neglect of *purajat* agglomerations and *tamlik* ownership of real estate in the *qasba*s, we studied in the previous section. Mughal imperial cities and the territorialization of their real estate in the lines of *muhalla* (neighborhood), *haveli* (courtyard mansion), and *bagh* (garden) were a product of hybrid varieties of lands. State, public, semi-public, and personal (*tamlik*) properties were juxtaposed with one another. The Mughal State was an interventionist state of its days regulating their construction, territorialization, settlement, and cadastral surveys.

In Shahjahanabad alone that had become the seat of power since 1639, the walled city was just one part of the urban political economy of Delhi. On its elongated Yamuna riverfront, the elite

created gardens and courtyard mansions.[203] Outside its ramparts were the famous *ganj*s with wholesale markets and storehouses, Paharganj, Rakabganj, Shahganj, among others. However, by the mid-eighteenth century, many of them had been abandoned and forced into the inner walls owing to the ever-increasing threats of raids and sieges to which the city was prone. In the seventeenth century, the *ganj*s still supplied food grains and vital necessities but also afforded space unavailable in the cramped inner walled city. Further away, the dispersed ruins of Firuz Shah Kotla and other forts of the city's bygone kingdoms as well as agglomerations around Sufi shrines such as Qadam Sharif, *dargah* of Hazrat Khwaja Baqibillah Naqshbandi and Nizamuddin could be found. Beyond Paharganj were Jaisinghpura (today's Connaught Place) and Jaswantpura, which housed agglomerations. While on duty at the Mughal court, the Rajputs stationed cavalry troops (*savar*) and horses in their camps (*dera*) in the *purajat*. Contingents of military troops were stationed outside the ramparts for the city's security as well as practical feasibility. Or else, they would have inundated the urbane life of well laid-out neighborhoods and streets of Shahjahanabad.

The imperial cities with their ramparts were classified in the following manner:

(1) forts and palatial mansions belonging to the *bayt al-mal*

(2) state properties such as courtyard mansions and gardens belonging to the *sarkar-i muʿalla*

(3) *muhalla*s (neighborhoods) within the ramparts for complete ownership (*milk*) outside imperial control

(4) *purajat* (agglomerations) with imperial privileges and weak ownership: substance (*ʿaqar* or immovable property) belonged to the state and usufruct (buildings and gardens or

[203] See K. K. Muhammed, "The Houses of the Nobility in Mughal India," *Islamic Culture* 60, no. 3 (1986): 81–104.

movable assets) to the grantee

Unlike colonial coastal cities like Calcutta, Bombay, and Madras that radically transformed South Asian urbanization, Mughal imperial cities were interspersed with semi-arid forests, swathes of *purajat* settlements, and farmland villages in a non-contiguous fashion outside the walled cities. Farmlands too existed at a walking distance from Delhi's Jaisinghpura on the Raisina hill. What seemed haphazard for Bernier—he was attuned to mid-seventeenth-century Paris, were indeed products of Mughal legal land use that dictated the logic of urbanization. Plenty of forest cover was never far off. It offered great hunting grounds full of fowl, *nilgai*, blackbuck, antelope, and deer outside Shahjahanabad, Akbarabad, Burhanpur, or Aurangabad. These choice lands were needed for one of the greatest pleasures and sports of Mughal imperial lifestyle, hunting. When Aurangzeb ʿAlamgir stayed in Shahjahanabad, he went on regular hunts (more than once a week) to one of his three favorite spots: Khizrabad (south of Humayun's tomb close to today's New Friends Colony), Shakarpur (on the eastern bank of the Yamuna), and Kharkhoda to the northwest of Delhi. He distributed the game meat to highly esteemed officers, friends, and relatives as gifts. Their cooks would have certainly reveled at the high honor of preparing dishes from the Padishah's game!

In Mughal civic life, the growth of agglomerations outside the walled cities and neighborhoods inside them were far from random. The imperial court assigned clusters of lands for the territorialization of *purajat* and *muhalla*s. In ear-marked state lands, Mughal urban legal norms tightly regulated the construction of *haveli*s and gardens. The *divan-i buyutat* (superintendent of buildings) was the chief officer in-charge of managing urban properties at the Mughal court. Similar positions existed in Burhanpur, Aurangabad, Akbarabad, Lahore, and other large cities of significance for the Mughal elite.

Four parallel tendencies and shifts in elite urban property-holding can be noticed in the seventeenth century (many of these legal processes that mostly depend on Hanafi law existed much earlier, though modifications were made as needs dictated):

(1) sanction of real estate both inside and outside walled cities for personal courtyard mansions and gardens on non-ownership basis but usufruct purposes
(2) gratuitous financial loans and gifts for the purchase of private mansions and gardens
(3) sequestration, confiscation, and escheat of the Mughal officers' properties, their accumulated movable and immovable assets subject to conditional stipulations or *provisos* of Hanafi law, Chinggisid norms, and nature of State property
(4) application of Islamic succession and inheritance laws to the properties belonging to the Muslim elites

Before we explain their actual operation, let us recapitulate a few vital rules of property. *Tamlik* (ownership) properties were transferable through four foundational Hanafi contractual procedures: sale (*bayʿ*), gift (*hiba*), lease (*ijara*), and loan (*ʿariya*) as well as succession and inheritance upon death of the owner. However, state lands could not be sold, gifted, or inherited, which was tantamount to privatization of public property. They could be leased or loaned for usufruct purposes without ceding state ownership. Chinggisid custom, Timurid practices, and the special position of the *bayt al-mal* (public fund) determined the rules of the game for escheat. Alongside, let us also emphasize a distinction between movable and immovable property in Hanafi law. As a rule, land alone, i.e., the ground is *ʿaqar*, immovable property. Any structures attached to it, including buildings, trees, walls, wells, canals, and roads, were considered movables unless their foundation was included as part of the land. This conception of immovable property is vital. In all Mughal contracts for land use (excluding *jagir*s, which were benefices to extract revenues)

like *ijara* and *madad-i maʿash*, this point is specified. Land is very often transferred without transferring movable assets like trees and houses. If the trees were included as part of *ʿaqar*—i.e., immovable land fungible with movables standing on it, their number and type are included. For instance, a *madad-i maʿash* grant transferred to Salim Khatun, the disciple of the previous grantee, Saiyid ʿAli in Khandesh mentioned twenty-five *bigha*s of land as well as three mango trees standing on it.[204] If the mango trees had not been explicitly mentioned in the contract, the Mughal State would have continued to own the mango trees and demand right to passage to pick up the mangoes. When the trees were included in the contract, neither the fruits nor the right to passage were legally possible; any violation constituted trespass. Many *baiʿnama*s of sale transactions between private parties that *qazi*'s notarized always specify trees, walls, and buildings to avoid future litigation or legal conflicts on the ownership and trespass. If not specified, the buyer had no claim on any edifices or trees except the land; the seller still retained his ownership.[205]

In the case of movable assets like edifices, walls, houses, mansions, and buildings in *tamlik*-designated *muhalla*s (neighborhoods) of cities, three possibilities existed:

[204] "*Parvancha* dated 9 rabiʿ al-thani julus 5," Doc. no. V/1448, Telangana State Archives, Hyderabad.

[205] In northern India, the Mughal substratum of contracting lands and trees separately survived well into the early twentieth century. In the colonial era, the Mughal tree-tax *sardarakhti* that we outlined a few pages earlier had gradually transformed into a term indicating separate ownership of trees apart from the land. An interesting case is the lease deed (sic. *kabuliatnama*) of one Bhola, s/o Kaloo in favor of Lala Onkar Pershad in Punjab in 1918. Bhola leased his land without ceding ownership of the fruit-bearing trees. As late as 1972, when this land had to be acquired by the government, a litigation arose on the shares of compensation for the descendants of the two parties. See "Amrit Lal Sehgal vs Mamleshwar Prasad And Ors. on 23 August 1972," Indian Kanoon, accessed on February 3, 2020. https://indiankanoon.org/doc/717484/. Such cases are of great historical value for excavating the colonial transmutations of Mughal property and contractual regimes in the subcontinent's legal history. Equally, their critical reading opens possibilities for demarcating the particularity of Mughal use that had become illegible under colonial rule due to an admixture of different legal systems. Mughal legal history is impossible without the deconstruction of colonial iterations. Superficial similarities betray a dense web of dust that has clouded the now forgotten language of Mughal contracts as they were based on Hanafi jurisprudence.

(a) transfer of the immovable: land but not the edifices

(b) transfer of movables: buildings but not land

(c) transfer of the immovable land fused with the movable structures where the built-up area is considered fully part of *ʿaqar*.

In Mughal historiography, none of these fundamental considerations have ever been discussed despite the fact that Hanafi law—the household *madhhab* of the Timurids, was the basis of its property and contractual regimes. As we will see below, this omission has grave consequences. Mughal proprietary rules have been construed not in accordance with the Hanafi definition of immovable property but that found in English common law that the Mughals could neither practice nor be expected to do so! In English common law—in vigor in all the nation-states of South Asia today, land and all structures affixed to it such as buildings, canals, lakes, roads, wells, trees, etc., are considered immovable property. In European civil legal culture too, structures are immovable. For instance, the French for buildings and real estate, *immobilier* resonates with this meaning. Since we are not dealing with a legal regime based on European "real property law" *avant la lettre*, Mughal land use, especially in cities, cannot be judged according to English common law. Paradoxes have occurred in historical interpretation since the Hanafi legal concept of *ʿaqar* (immovable property) has never been invoked. That blind sightedness has costs of turning half a century of one of the subcontinent's pre-eminent emperor's reign into a few simplistic clichés, but more significantly, of forgetting the profound impact that Islamic law had on premodern South Asia's polity, society, and political economy. Mustered with the arm of its legal concepts, procedures, and doctrines, the Mughal imperial court determined land use pattern in urban and rural spaces.

Managing Mughal State Properties in Urban Neighborhoods

The Mughals and their elite entourage cherished gardens they laid out across the subcontinent's cities that offered favorite pastimes in the shade of pleasure and aesthetic beauty. Gardens were treated differently as per Hanafi law since they fell into a suspended category. They were neither food grain producing agrarian lands nor commercial plantations like betel and indigo cultivations. Nor were they built areas like *haveli*s. Hanafi law prohibits the taxation of fruits and legumes as they were meant for daily consumption. However, dried fruits, saffron, cotton, and turmeric, were taxable.[206] Babur had introduced the legal practice of assessing taxes on trees in conformity with Hanafi rules. Indeed, Mughal officers were sent to count the trees and estimate their produce at the time of fruit ripening to collect *sardarakhti* (a fixed money tax per tree) and *zirdarakhti* (a share of the fruits).[207] Buying a *bagh* within non-*tamlik* lands required approval of the *sarkar-i muʿalla* in order to create a separate personal property holding. Ruh Allah Khan's father, Khalil Allah Khan, who served as the governor of Punjab in the early part of Aurangzeb ʿAlamgir's reign, requested land to lay out a *bagh* in 1661. In the imperial cities too, the Kacchawaha Rajputs possessed *purajat* and gardens, especially the Rahatbakhsh Bagh in Shahjahanabad (the Rajputs very often called it Jahanabada in its abbreviated form). On June 13, 1660, Jai Singh I (r. 1621–1667) had requested land to lay out a new garden. Aurangzeb ʿAlamgir was pleased enough and favored (*marhamat shuda*) him with fifty *bigha*s. When Jai Singh wished to extend his existing properties and was willing to swap ten *bigha*s of land elsewhere for contiguous lands adjacent to his garden, his request was accepted, and additional land bestowed

[206] Roger Arnaldez, *Aspects de la pensée musulmane* (Paris : J. Vrin, 2015), 300.

[207] *Zavabit-i ʿalamgiri*, MS Or. 1641, 137a. Also see Habib, *The Agrarian*, 285 for the imposition of this tax.

(*ʿinayat*). At his pleasure, Aurangzeb ʿAlamgir gave him the extra ten *bigha*s without any need for land swaps.[208] In terms of Islamic contractual law, the Padishah was making a *hiba* (gift) defined as *tamlik ʿayn bi-la ʿiwad* (transfer of a corpus without consideration). In 1722, Mir ʿAli Naqi Khan from the Mughal court issued an approval order (*muvafiq*) to Sawai Jai Singh II's *vakil* to build a new garden in Agra in the Jaisinghpura agglomeration. The imperial chancery also granted additional adjacent lands and ordered the local officials to verify, survey, and do the needful to release the lands without interference.[209]

In the *sarkar-i muʿalla* or urban state lands, owning a garden or *haveli* required a formal transfer of property from the state to the individual. The land was converted from *sarkar-i muʿalla* to *tamlik* against the payment of the estimated value of the property. Bhawal Das Rastogi's garden adjacent to Fidaʾi Khan's Garden in Shahjahanabad belonged to the *sarkar-i muʿalla*. In 1660, Jai Singh had shown interest in acquiring this property; Aurangzeb ʿAlamgir sanctioned it in June.[210] With the aid of the *mutasaddi*s (clerks) of the *haveliha-yi nuzuli* (state-owned houses), Ustad Hisam al-Din, the *miʾmar* (master mason) estimated the market value at 5114 rupees based on its construction costs, which had been verified from the neighborhood's *kasra* (masterplan). Since these were state lands, they could not be sold through a regular sale deed. Rather, the Mughal chancery had to issue a *farman* with Aurangzeb ʿAlamgir's bombastic *hukm-i jahan mutaʿ* ("mandate obeyed by all the world") that formalized the conversion to *tamlik* land. Jai Singh's

[208] "*Vaqiʿa* dated 4 shawwal julus 3 (June 13, 1660)," in *Akhbarat*, MS 34, Jadunath Sarkar Collection, National Library of India, Kolkata, fol. 59.

[209] Doc. no. 279, Kapad Dwara Collection.

[210] "*Farman* from Aurangzeb ʿAlamgir to Jai Singh dated 12 shawwal 1071 AH (May 21, 1661)," Old no. 93, Rajasthan State Archives, Bikaner. An English translation of a copy can be found in Mohammad Azhar Ansari, *Administrative Documents of Mughal India* (B. R. Publishing Corporation, 1984), 40–2.

*vakil*s made the 5114 rupees payment to the treasury. The order also exempted his garden from the collection of *sardarakhti* and *zirdarakhti* taxes. While approved in June 1660, it took until January 1661 for the imperial chancery officials, Raja Raghunath, Fazil Khan, and Rahmat Khan, the future *divan-i buyutat* to verify the papers and sign them for the final handover to Jai Singh.

For illustrating the ownership of courtyard mansions, let us focus on the ninth year of Aurangzeb ʿAlamgir's reign (1666–67). Mourning his father's demise, he had stayed on for several months in Akbarabad (Agra) with his extended family. In the latter part of the year, he moved back to Shahjahanabad and took several decisions on the allocation of courtyard mansions at the privy council meeting (*anjuman-i khass-i ghusalkhana*). Shivaji's escape in August 1666 had consequences for *mansabdar*'s urban properties. On August 19, Bakhtawar Khan, *khidmat-i araʾiz* (presenter of petitions) informed him of Kunwar Ram Singh's report that Shivaji had escaped. Immediately, Uday Singh Bahadur was deputed to conduct a search and raid operation; all imperial and regional officials were informed to keep a watchful eye for the absconding. The search began on a war footing and decisions were made at a rapid pace at the *ghusalkhana*. One can only imagine the Padishah's temperament and mood in this week where he kept up with daily courtly transactions! In over a month's time, a *dastak* for Shivaji's "arrest warrant" had been issued to the *gumashta* of Siyadat Panah, Mir Muhammad Shafiʿ, *thanadar* of Bayana.[211]

What has Shivaji's escape got to do with courtyard mansions? Shivaji had escaped under Kunwar Ram Singh's watch. On August 22, Firuzkhani Bagh given to Ram Singh was

[211] "*Siyaha-yi huzur* dated 11 rabiʿ al-thani julus 9/1077 AH (October 1, 1666)," A. R. no. 19, Telangana State Archives, Hyderabad, in Yusuf Husain Khan, *Selected Documents of Aurangzebʿs Reign, 1659–1706 A.D.* (Hyderabad: Central Records Office, 1958), 54–5.

confiscated.[212] This was a follow-up to a decision just a day earlier of dismissing Ram Singh from his *mansab*. Within a few days more decisions were taken. Ram Singh's *jagir*s were allotted as *tankhva* to Kunwar Kirat Singh and Daʿud Khan. Only a week later when the Padishah's temperament had cooled off from the irritation of the Shivaji episode did Ram Singh get back those parts allotted to Kirat Singh. This was only half-way luck. On August 27, Ram Singh was nevertheless allowed to stay on in his father Jai Singh's *haveli* in Jaisinghpura (the imperial court had to approve that) and spent at least until September 20 at his father's courtyard mansion as he had nowhere else to find accommodation. Four of Ram Singh's servants had been arrested pending enquiry on who was responsible for Shivaji's escape. They were released on September 17 once the verifications had absolved them of any wrongdoing. It was not until February 1667 that Ram Singh was finally allowed to build his own *haveli* in his *dera* (camp).

Many requests for *haveli* allotments were pending the Padishah's endorsement. On October 27, both Jaswant Singh and Sarbulanad Khan Khwaja Rahmat Allah requested permission to build *haveli*s in Lahore, which were rejected. Later that year though, Qulanz Khan's *haveli* in Lahore was transferred to Mirza Saiyid Sultan's possession. It was not until January 17, 1667 that Jaswant Singh was granted permission and allotted 500 *bigha*s outside Lahore to build his *haveli* and garden. A few days later, on January 21, Khwaja Shukat's *haveli* was handed over to one Aurangabadi for housing a few *karkhanajat* (workshops). In the same *ghusalkhana* gathering, Aurangzeb ʿAlamgir sanctioned 22000 rupees for ʿAbd al-Wahhab (d. 1675), *Shaikh al-Islam* and *Qazi al-quzat*, to buy a *haveli* in a *muhalla* of Shahjahanabad. The imperial court could not allocate

[212] "*Vaqiʿa* dated 30 safar julus 9 (August 22, 1666)," in *A Descriptive List of Akhbar-i-Darbar-i-Mualla (Mughal Court News-Letters): Prepared and addressed by the waqai-nawis to the Princes of Jaipur State, August 1666 to February 1667 (9th Alamgiri Regnal Year)* (Bikaner: Directorate of Archives, Government of Rajasthan, 2004), 30.

the *haveli*s closer to the Red Fort that were reserved for the highest-ranking military officers. Instead, the huge financial aid helped ʿAbd al-Wahhab buy a courtyard mansion fit for his status in those neighborhoods where *tamlik* properties could be freely bought and sold. On February 5, Bahadur Khan's request to depute officials for repair works to his *haveli* in Shahjahanabad was accepted too. A few days later, Saiyid ʿInayat, Shujaʿat Khan's son was also allotted lands for *haveli* construction.

How do we read these disparate decisions on *haveli* allotment at the Mughal imperial court as legal mechanisms for creating property claims? The difficulty in determining the proprietary ownership of courtyard mansions in Mughal cities is far more complex today for three reasons: the nature of Mughal *haveli* allocation, legal titles to properties, and the Hanafi concept of immovable property.

Within the walled city, the forts, *haveliha-yi nuzuli* (state-owned courtyard mansions), and state garden lands were owned by the Mughal *sarkar-i muʿalla*. As we saw above, the allocation of state mansions, their revocation, and repair were all managed by the Mughal State. A range of anecdotal evidence clarifies the nature of state ownership. These *haveli*s were allotted to the officers or given at rent. They were listed in the *sarkar-i muʿalla*'s *kasra* (masterplan) available with the *divan-i buyutat*. Most likely, a detailed description of each mansion existed in a document known as *chihra-yi haveli* (descriptive roll of a courtyard mansion). Munshi Nand Ram Kayastha Srivastava's contemporaneous accounting treatise, *Siyaqnama* (composed c. 1694–96) from northern India provides a template for preparing the *chihra-yi haveli* specifying details of *andarun* (interior) and *birun* (exterior) of the mansion, its rooms, *dalan* (vestibule), courtyards, fountains,

etc.[213] Indeed, when Prince Aurangzeb was at Agra, he had sent a letter to his father's imperial court at Shahjahanabad seeking clarification on *haveli* masterplans of Agra. He asked: "are [the houses in the vicinity of the fort] state-owned courtyard mansions or privately owned?" (*an haveliha-yi nuzuli ast ki ya maliki darad*).[214] He was planning to allot mansions to some Mughal *mansabdar*s and asked if they were state-owned, and in which case, if there were any he could assign (*taʿyin*). However, if they weren't, he enquired on the nature of their private ownership. If the owners (*malikan*) were residing there, he wished to know at what price (*qimat*) they could be bought. If they were rented out, he requested advice on the rent (*kiraya*) the "government of bounty signs" (*sarkar-i faiz asar*) was willing to shell out. All these decisions had to be made where the final authority remained, with the Padishah, the financial accounts with the *bakhshi*, and the property registers with the *divan-i buyutat*. Certainly, when the prince wanted to rent or buy a mansion, the tenants had no option but to evacuate to make space for his choices. In these matters, Mughal subjects had weak legal protections against eviction by their political masters. Be that as it may, Prince Aurangzeb's letter makes it apparent that the vicinities of the Mughal forts were very often surrounded by *haveliha-yi nuzuli* (state-owned courtyard mansions). Since the seat of power and with it the Mughal elite had moved to Shahjahanabad in 1639, it is most likely some state-owned Agra mansions had been sold off as they had lost the purpose of housing the *umaraʾ*.

The *haveli*s in imperial cities like Akbarabad, Lahore, Shahjahanabad, and Aurangabad—all of them named after the Great Timurids except one, even while inhabited by several generations of the same family, often changed hands, and were allocated to others upon petitions and needs.

[213] Munshi Nand Ram Kayasth Srivastava, *Siyaqnama* (Lucknow: Nawal Kishore, 1879), 161.

[214] *Adab-i ʿalamgiri*, vol. 2, 880.

The inter-*umaraʾ* rivalry in coveting the best urban real estate was a matter that was routinely resolved at the Padishah's *dargah*. The Marwar Rajput, Jaswant Singh's (r. 1638–1678) *haveli* in Shahjahanabad was given to Daʾud Khan Quraishi (Jaswant Singh as well as Quraishi had sided with Dara Shukoh and fought against Aurangzeb ʿAlamgir's troops in the Battle of Dharmat on April 23, 1658).[215] *Amir al-umaraʾ* Shayista Khan's *haveli* outside the Lahori Gate of the Red Fort too was part of the public property real estate in imperial cities the *mansabdar*s occupied during service at the pleasure of the Mughal rulers. These were not private properties. The ownership of both the land and the built area (which were two distinct properties, one immovable and another movable as we stated above) belonged to the Mughal State. Therefore, Aurangzeb ʿAlamgir sanctioned *haveli* repair expenditures (*marhamat*) from the Mughal exchequer. On December 20, 1666, the *divan-i buyutat* reported to him that the renovation of the courtyard mansion allotted to ʿAlam Bardar Khan's had been complete.[216] Rather than prove or disprove the existence of private property in Mughal cities, these *haveliha-yi nuzuli* (state-owned courtyard mansions) represented a sort of public housing akin to rent-free or subsidized housing ministers and bureaucrats today enjoy in Lutyen's Delhi. For that sake, none of them become proprietors or their heirs successors to the houses they occupy by virtue of office even if they might stay on for decades at end.

In the *muhalla*s (neighborhoods) across the subcontinent's cities, lands and buildings were constructed for personal ownership. It was up to private individuals to buy and sell the lands, the houses, or both together. The thoroughfares and canals were all public properties. In the previous section, we noticed that sale deeds endorsed by *qazi*s were common means of acquiring land in

[215] Iqbal Husain, "New Light on Some Events of Early Years of Aurangzeb's Reign," *Proceedings of the Indian History Congress* 52 (1991): 276.

[216] "*Vaqiʿa* dated 3 rajab julus 9 (December 20, 1666)," in *A Descriptive List of Akhbar-i-Darbar-i-Mualla*, 43.

Mathura and Banaras. Therefore, real estate sale was limited to *muhalla*s earmarked as *tamlik* lands.

In the outskirts of the walled cities, only the lands of the gardens and *purajat* (agglomerations) were *ʿaqar* (immovable property). Trees, buildings, and mansions were privately owned on state lands from which Aurangzeb ʿAlamgir made allocations. Cities were no contiguous cityscapes, but layers of lands distributed across jurisdictions of state, private, and state lands, further controlled through modifications to *ʿaqar* that were determined by the Mughal State. Ramparts not only fortified the cities' defenses but demarcated the limits between lands and properties allotted for free transactions. Within the ramparts and the gateways of Shahjahanabad, excepting the Red Fort, public properties in its vicinities, thoroughfares, lanes, canals, and public gardens, the remaining properties were ownable as personal property if only one had the money and status to do so. Outside the ramparts, the princes and princesses and the officers had gardens and mansions for their private leisure; their *daiʾra* (tent) also supported the military contingents of cavalrymen, and a whole retinue of servants and slaves without whose services life was unimaginable. These *haveli*s and often attached gardens and *purajat* were agglomerations granted as imperial privileges that were all state lands, which made their re-petitioning upon the new Padishah's accession necessary as we saw earlier.

In the long-standing Mughal practice of granting privileges, the Rajputs accumulated some of the best real estate. Like their *vatan jagir* (homeland fief) in Rajasthan that were nominally reconfirmed for the payment of a tribute (*pishkash*), they also owned *tamlik* lands in various urban centers. Most notably, the Kacchawaha Rajputs owned the land where Taj Mahal was built on the banks of the Yamuna. Shah Jahan bought the property for Arjumand Banu Begum *aka* Mumtaz Mahal's mausoleum. He swapped the land in exchange for several *haveli*s in Agra, granted as

compensation to the Rajputs.[217] Perhaps, more than any other elite group, the Kacchawaha Rajputs built *purajat* (agglomerations) outside the ramparts of cities where they had rights to build *haveli*s and distribute largess to their associates. On ashadha badi 6, 1751 VS/June 3, 1694, Nityanand, a Rajput servant informed Prayag Das in the Rajput chancery that he had reached Aurangabad and concluded an *ijara* (lease holding) worth 2000 rupees for Aurangabad's Jaisinghpura management. Jasinghpura neighborhood south of Begumpura on the banks of the Kham river opposite Aurangabad's Makai Gate still exists. The *vakil*, Meghraj contracted the *ijara* to a *sahukar* for a three-year period (1692–95) from *ta. ju avali sana* 36 (*jumada al-awwal julus* 36/1103 AH) to *ta. shavala sana* 39 (*shawwal julus* 39/1106 AH).[218] He collected the down payment in a *hundi* from the lessee, a local *sahukar* (*aurangavada aya ijaradara pura ki jamina sahukara liyo*). Nityanand also made an estimate for *haveli* and garden repairs (*maramati*, from the Persian *marhamat*) and forwarded it for bureaucratic sanction and release of funds from Amer. Rajput *haveli*s in *purajat* were private residences constructed, repaired, and managed at personal expenses. As per Hanafi law, the immovable property, land (*ʿaqar*) belonged to the Mughal *bayt al-mal* from which a privilege to settle an agglomeration had been granted. The Rajputs only owned the built-up areas like mansions, courtyards, walls, and gardens that were movable assets they could buy and sell.

The Padishah's palaces, mansions, and forts like the Red Fort were *bayt al-mal* property under his custody. As prince, even Aurangzeb had to send a letter from Sirhind (on the way between Delhi and Lahore) to Delhi requesting Shah Jahan's permission to stay in the mansions of the

[217] Doc. no. 8, Kapad Dwara Collection. The Kacchawaha Rajputs preserved both originals and *naqls* of these documents. Also see R. Nath, "Mughul Farmans on the Land of the Taj Mahal," *Quarterly Journal of the Pakistan Historical Society* 37, no. 2 (1989): 99–114.

[218] "Rajasthani letter from Nityanand to Prayag Das dated ashadha badi 6, 1751 VS (June 3, 1694)," Doc. no. 177, *Khatuta hindi ahalakarana*, Bundle no. 1, Rajasthan State Archives, Bikaner. The Rajput officials used the abbreviation *ta.* to denote *tarikh*, the date of the Islamic calendar.

Lahore Fort. The letter went from Sirhind to Delhi and an approval reached back Sirhind. An advisory note would have been sent to the Lahore Fort's military commander ordering him to do the needed; the prince's advance guards would have reached Lahore ahead of time preparing for his royal reception. Mughal fort guards would have not let the prince enter without permission. Of course, he could fend off guards with military tactics but that would be tantamount to laying siege and declaring a direct assault on Shah Jahan's authority (those maneuvers and strategies had to wait when the time was ripe to take over the Mughal State and effectively enforce authority of giving permission rather than taking orders). No legal title can be found even for the Red Fort even though Shah Jahan onwards it had been the Timurid household's home. Why would a state prepare legal titles for itself? This did not mean Aurangzeb ʿAlamgir owned it during his lifetime. If he had, according to Islamic inheritance laws, the Red Fort would have been partitioned among his heirs upon his death. Rather, the property belonged to the *bayt al-mal*.[219] The Padishah, the grantor of all legal titles was also the trustee of the *bayt al-mal*, the collective public fund and endowment belonging to the Muslim community. Therefore, many state properties under his custody, notably forts, had no legal title. This theory of public property in Islamic law is vital towards an explanation of property in general in the Mughal State. The transfer (*intiqal*) of *bayt al-mal* property by sale, gift, bequest, and succession was prohibited. Part of the difficulty arises because we are attuned to modern states based on a social contract, which are themselves parties to private contract law. Hence, the Government of India, directly or through its variety of institutions like ministries, municipal corporations, etc., all endowed with the modern notion of legal personality, has legal

[219] Somewhat similar logic can be found in European monarchies too though they are bound to far stringent legal provisions. Windsor Castle is Queen Elizabeth II's personal property bequeathed to her from her father George VI's estate. As her personal property, she has the right to alienate it through sale. However, like the Red Fort, the Buckingham Palace is Crown property that even she cannot alienate in her person.

titles. It can produce a legal title even for the Rashtrapati Bhavan (Presidential Palace) and the Parliament House that no Timurid could for the Red Fort. Indeed, when the last of the Timurids, Bahadur Shah Zafar was exiled in 1858, he had virtually no immovable properties in his name even though the Mughal Empire had enriched and secured properties for many communities, groups, and individuals across the subcontinent. Modern procedures are due to the nature of property rights and their legalization specific to capitalist societies where a state too is a party endowed with legal personality in private contractual law (like individuals, firms, and corporations) as much as it represents the public order. In the Mughal world, public properties were legally owned by the *bayt al-mal*.

The lands adjacent to imperial quarters and forts across the Mughal realms were public properties of the *sarkar-i muʿalla*. The *umaraʾ* built mansions adjacent to the imperial quarters. Their claims to these properties were not rights *stricto sensu*; they were entitlements in lieu of service revocable at any instance with immediate effect. They were, as occasions arose, subject to eviction. Let us take Burhanpur in Khandesh, a city Aurangzeb ʿAlamgir knew very well from his years as prince. During his stay in 1643, he had personally supervised the repairs of the imperial ramparts at a cost of 5612 rupees. Madar al-mahami, Diyanat Khan had sanctioned him these expenditures from the imperial court at Shahjahanabad. The cash was withdrawn from the local treasury in Burhanpur. The expenses included 4300 rupees to improve the canal that flowed from the imperial fort on the Tapi river to Laʿl Bagh at the city's outer edge.[220] 663 rupees was spent on

[220] The Burhanpur Railway Station is located in Laʿl Bagh. In northern and Central India, colonial-era railway stations help demarcate the extent of Mughal urban sprawl as they were built not far from their outskirts. Given the population settlements inside and the difficulty of passing railway lines through walled cities, proximity to the city ramparts, or, the *purajat* if they had survived in a contiguous manner with the walled cities, provided easy access. This trend holds for Lahore Junction, New Delhi (where once Shahganj and Paharganj food grain markets stood at the height of the city's glory), Agra City, Ujjain Junction, Surat, among many others. The Old Delhi Railway Station built in 1864 lies within the northern parts of Shahjahanabad circumscribed by Kashmiri Gate as much of that neighborhood had been

plastering (*marhamat-i shikast*) and 649 rupees for further repairs of the *Daulat khana*.[221] As Aurangzeb ʿAlamgir knew very well, some of the *umaraʾ* had built mansions adjacent to what had become his imperial quarters in the Burhanpur Fort. More than two decades later, in 1666, he was not too happy with this status quo and issued an order for vacating these mansions. The houses of two officers, Mir Khan and Hasan ʿAli Khan were adjoining imperial quarters (*daʾira-yi padishahi*). When they came to the Padishah's attention (*nazar-i hazrat*), he ordered his servants to promptly get them vacated (*chela ra farmudand ki daʾira-yi Mir Khan u Hasan ʿAli Khan rubaru-yi daʾira-yi padishahi and*).[222] In 1678, some of the lower-ranking officers *mansabdar*s were prohibited from constructing their quarters since they were diverting public funds allotted for their servants' salaries and had misused them for their personal self-aggrandizement.[223] On such matters, they had no right to legal recourse; the Padishah had the choice to let them stay or vacate them based on his personal discretion (*siyasa*). These discretionary powers were not applied arbitrarily. Since ownership of the *sarkar-i muʿalla* urban lands belonged to the Mughal State, he had the powers to arbitrate land use. Unlike real estate purchased in *muhalla*s as per Islamic contractual law, these courtyard mansions and gardens, being state property, were objects of escheat, sequestration, and confiscation.

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demolished in the years following the Siege of Delhi in 1857.

[221] "*Siyaha-yi huzur* dated 26 jumada al-awwal 1053 AH (August 2, 1643)," in Yusuf Husain Khan, *Selected Documents of Shah Jahan's Reign* (Hyderabad: Daftar-i-Diwani, 1950), 113–4.

[222] "*Vaqiʿa* dated 3 rabiʿ al-thani julus 9 (October 17, 1666)," *Akhbarat*, MS 34, National Library of India, fol. 114a. I have corrected the errors in this transcription made for Jadunath Sarkar.

[223] "*Vaqiʿa* dated 22 safar julus 21 (April 5, 1678)," Ibid., fol. 187a.

Escheating Properties of Elite Officers:

The Prevention of Intergenerational Wealth Transfer

Widely acknowledged as a common Mughal custom,[224] the legal foundations and procedures of escheat and sequestration of *mansabdar*s' properties have rarely been analyzed. Timurid escheat intersected between operations of statecraft (*siyasa*), Islamic inheritance laws, the nature of state ownership of courtyard mansions, gardens, and their lands, and methods of financial liquidation and debt repayments to public and private financiers. Three kinds of escheat existed in the Mughal world, all in conformity with the *shariʿa*:

(a) *mal-i bi-tan* or escheat of an heirless person's property: according to Islamic inheritance laws (*faraʾid*), the State is the seventh and last class of inheritor when no blood relatives can be found.

(b) *zabt-i amval* for escheat upon the death of the Mughal officers' properties: the possession of state property given for income generation reverted to the *bayt al-mal*, the public fund of the Muslim State, from which these privileges had been guaranteed in the first place.

(c) *zabt-i amval* for temporary or permanent confiscation and sequestration of Mughal officer's properties to punish misdeeds, incompetency, and termination of office: the Padishah's *siyasa* (prerogative powers).

[224] See Zafarul Islam, "The Mughal System of Escheat – An Analytical Study," *Proceedings of the Indian History Congress* 46 (1985): 337–9; Firdos Anwar, "Implementation of Escheat under Shahjahan: Some Implications," *Proceedings of the Indian History Congress* 52 (1991): 266–73. Also see Firdos Anwar, *Nobility under the Mughals: 1628-1658* (New Delhi: Manohar, 2001); Ebba Koch, "Palaces, Gardens and Property Rights under Shahjahan: Architecture as a Window into Mughal Legal Custom and Practice," in *The Mughal Empire from Jahangir to Shah Jahan*, eds. Ebba Koch and Ali Anooshahr (Mumbai: Marg Foundation, 2019), 197–219.

The holding of property amongst the *umaraʾ* was delimited by the possibility of its escheat for the above three reasons to the Mughal *sarkar-i aʿla* (central administration). Properties were confiscated for short-term periods often as a form of punishment for indiscipline, inefficiency, ineffective implementation, and dereliction of duty. During this period, the properties belonged to the *sarkar-i muʿalla* (urban state lands) or assigned to other *mansabdar*s for taking care. Upon rebellion, even prince Muhammad Muʿazzam's and Zib al-Nisaʾ Begum's estates, who had connived with her brother for the usurpation of the throne, were confiscated.[225] Aurangzeb ʿAlamgir clipped their wings for future rebellions; he acted as their Padishah since his duty and purpose called for the preservation of his uncontested paramount authority.

Was escheat uncanonical according to the *shariʿa* or Chinggisid *yasa*? In Islamic laws of inheritance, it is legal to escheat property if no legal heirs existed for succession; the *bayt al-mal* (treasury) becomes the sole inheritor (provision (a) mentioned above). However, this provision concerned only personal properties. Yet, outside this specific provision, the Persian historian, ʿAlaʾ al-Din ʿAta Malik Juwayni (d. 1283) had argued that the Chinggisid *yasa* did not permit taking the deceased's properties to the treasury but leaving it to his apprentices and slaves. Was there, then, a contradiction?

> They [the descendants of Genghis Khan] have a custom that if an official or a peasant die, they do not interfere with the estate he leaves, be it much or little, nor may anyone else tamper with it. And if he have no heir, it is given to his apprentice or his slave. On no account

[225] Ishwar Das Nagar, *Futuhat-i-Alamgiri*, ed. Tasneem Ahmad (Delhi: Idara-yi adabiyat-i dilli, 2009), 93.

is the property of a dead man admitted to the treasury, for they regard such a procedure as inauspicious.[226]

Aurangzeb ʿAlamgir and his forefathers were aware of Chinggisid *yasa* described by Juwayni Yet, Juwayni's thoughts—true or apparent, were possible to practice for a Muslim Padishah. The Timurids may very well have claimed descent from Genghis Khan, they were equally, if not more responsible to abide by the *shariʿa*. Indeed, provision (a) above of *mal-i bi-tan* did not violate Chinggisid *yasa* despite appearing so. Heirless property went to the *bayt al-mal* and not to Aurangzeb ʿAlamgir's personal treasury (*khizana*) for his personal gains. Moreover, Chinggisid *yasa* pertained to personal property whereas the Mughals escheated state properties (for instance, *haveliha-yi nuzuli*) given for usufruct from the *bayt al-mal* (provisions (b) and (c) above). When they confiscated the properties, they were not taking in personal wealth. Normatively neither *yasa* nor *shariʿa* were violated. Timurid sovereignty was a meticulously crafted legal and political doctrine. The alleged contradictions and tensions supposed between these two strands are products of modern ways of depicting premodern Islamic sovereignty through a narrow prism of choosing between orthodoxy and heterodoxy or the *shariʿatic* and the non-*shariʿatic* modes of legal reasoning. No such false dichotomy was visible to the Timurid Padishahs and their chanceries. Each form of law, custom, and rule had its place within a hierarchy of norms from which choices and decisions were made.

[226] ʿAlaʾ al-Din ʿAta Malik Juwayni, *The History of the World-Conqueror*, trans. John A. Boyle, vol. 1 (Cambridge, Massachusetts: Harvard University Press, 1968), 34.

The rhetorical flourish that chronicles are infused with leave little space to judge the veracity of everyday Mughal administrative practices, be they escheat, or any other legal procedure. Saqi Mustaʿidd Khan (d. 1724) claims hyperbolically that Aurangzeb ʿAlamgir had abolished escheat:

> His Majesty also forbade the practice of escheating to the State the property of the dead nobles who had left behind them no debt due to Government, but he let their heirs succeed to their legacy, — whereas in former reigns the imperial collectors used strictly to confiscate such property and this rule proved a source of suffering to the surviving relatives.[227]

A few decades later, in *Siyar al-mutaʾakhkhirin*, Tabatabaʾi argued though that it was his successor, Muhammad Shah who had abolished the age-old Timurid practice of escheat.[228] Be that as it may, the utter paucity of documentary evidence from Akbar's and his son's reigns makes it difficult to ascertain the nature and the extent of its use. Shah Jahan and his son continued to escheat, especially for state-owned mansions and wealth running into tens of millions of rupees. Rather, Muhammad Shah (r. 1719–48) who was pulled in different directions during a tumultuous reign beset by revenue constraints, *ijara* tax farming, and Nadir Shah's sack of Delhi, did make substantial financial concessions.[229] Where Aurangzeb ʿAlamgir had made exceptions, the wealth

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[227] Saqi Mustaʿidd Khan, *The Maásir i ʾálamgírí of Muhammad Sáqí Musta'idd Khán*, ed. Maulawi Agha Ahmad Ali (Calcutta: Asiatic Society of Bengal, 1871), 530–1 (*Maāsir-i-ʻālamgiri: A History of the Emperor Aurangzib-ʻĀlamgir (reign 1658–1707 A.D.)*, trans. Jadunath Sarkar (Calcutta: Asiatic Society of Bengal, 1946), 316).

[228] "[I]t was an established custom among all the emperors of the family of Baber, as well as with all those of the race of Timur, to take possession of the estates and wealth of their deceased ministers and servants, to the exclusion of their heirs, to whom they vouchsafed as a favour, such a share as they thought fit. But, in truth, it was such a custom as neither religion nor justice could justify, that a man, after having served his sovereign during his whole life, at the expense of his sweat and blood, nay, after having perhaps sacrificed himself in his cause, should at his death have all his hard earnings carried away and confiscated, and leave his children destitute, more solicitous of how to subsist the next day, than how to lament his death." Mir Ghulam Husain Khan Tabatabaʾi, *The Siyar-ul-mutakherin, A History of the Mahodeman Power in India during the Last Century*, trans. John Briggs, vol. 1 (London: Oriental Translation Fund, 1832), 282–4.

[229] See Zahiruddin Malik, *The Reign of Muhammad Shah, 1719–1748* (Bombay: Asia Publishing House, 1977), 255–

amounted to no more than a few lakh rupees. Escheat was never systematically or universally abolished.

The *divan-i buyutat* (superintendent of buildings) was in-charge of maintaining records of the immovable assets such as courtyard mansions and gardens given to the *mansabdar*s. These escheated lands would be entered into the *avarja*, a ledger with a note designating the entry had been made (*dakhil-i avarja*). The *avarja* not only contained the *suba* accounts of *jagir*s, the lists of the *jamaʿ* of each *sarkar* and *pargana* down to the village census with the lands belonging to the *khalisa* but also details of the *mansabdar*s' properties. The *khan-i saman* (superintendent of the household) made a list of movable assets and compiled the total list of escheatable properties. According to *Zavabit-i ʿalamgiri* ("The Promulgations of the World Conqueror"), the *divan-i buyutat*'s tasks included *zabt-i amval bi-infaq-i khan-i saman* (sequestration of properties with the aid of the *khan-i saman*).[230] The *khan-i saman*'s work was clearly cut out: "Escheat of property. If the order is to restore [to the officer under audit], then send a copy of the order to the office [of the Diwan?], so that his *tankha* may be paid according to it" and "appraise the Padishah of the different articles of the *amval*, escheated assets."[231] The two officers assisted by scores of menial servants (*shagird pisha*) and accountants (*mustaufi*) prepared a *siyaha-yi amval* (details of the effects of the deceased). Escheated property reverted to the *bayt al-mal* on failure of heirs in the form of *mal-i bi-tan* (bodyless properties), property devolving to the state through want of other individual legal claimants, or, when sequestered temporarily for unsatisfactory behavior as happened with Kunwar

6; 310. Even here it was case by case.

[230] *Zavabit-i ʿalamgiri*, MS Or. 1641, British Library, London, fol. 21b.

[231] Sarkar, *Mughal Administration*, 37–8. Translation modified.

Ram Singh on Shivaji's escape. Upon death, termination and dismissal from office, the imperial court would request servants to raid and seal all movable and immovable properties of the *umaraʾ*. Public dues and civil debts were paid off from the seized properties and wealth in an explicit ranking order of repayment. First in order of priority, state dues were pre-eminent; they mostly included *mutalaba* annuities made for military expenditure and *musaʿadat* advances for personal expenses. They were followed by debts contracted with private individuals. Only after this process did inheritance, escheat, and shares of property get decided at the privy council. Not being State matters of general concern, these issues were not discussed at the *divan-i ʿamm* (public gathering) but in more intimate spaces with the *divan-i buyutat*, *khan-i saman*, *bakhshi al-mulk*, and *mustaufi* present to appraise the Padishah of the value, nature, and distribution of properties.

Unfortunately, a unique document collated in ʿAli Muhammad Khan's eighteenth-century compilation from Gujarat, *Mirʾat-i ahmadi* has often been mistaken as proof that escheat had been abolished. The document dated 21 safar julus 9/1077 AH (August 23, 1666) is the copy (*naql*) of the memorandum (*yaddasht*) the local chancery at Ahmedabad prepared of the "imperial news report on the confiscation of the *mansabdar*s' properties and goods" (*vaqaʾiʿ-i dargahi dar bab-i zabt-i amval-i mansabdaran*).[232] Let us reconstruct the chain of information circulation and transmission between the imperial and the local chanceries in order to situate the document's *locus* within the hierarchical space of Mughal orders. Orders went through layers of textual iterations forming the documentary technology for Mughal bureaucratic rules, accounting norms, and accountability and responsibility for individual actions. When we appreciate their nuances by

[232] ʿAli Muhammad Khan, *Mirat-i-Ahmadi: A History of Gujarat in Persian*, ed. Syed Nawab Ali, vol. 1 (Baroda: Oriental Institute, 1928), 266–7. (ʿAli Muhammad Khan, *Mirat-i-Ahmadi: A Persian History of Gujarat*, trans. M. F. Lokhandwala (Baroda: Oriental Institute, 1965), 238).

reverse engineering their fabrication, the place, meaning, and context of this document and a historicist appreciation of Mughal decisions becomes clear.

Shahjahanabad had not sent an imperial decree (*farman*) issued in the Padishah's name to Ahmedabad. Instead, Iftikhar Khan Sultan Husain, the *khan-i saman*, who had been superintendent of the household since 1663 sent out a routine chancery order on the confiscation of the properties. On its receipt, the *divan*s in Ahmedabad prepared a *yaddasht* (memorandum) of the orders received for two purposes. First, it acted as a mnemonic written device that listed the rules received and their date of reception to keep a careful account of current orders for reference. Second, the *yaddasht* was made for the imperial court to know orders had indeed been appropriately received. The memorandum (including the one from *Mir'at-i ahmadi*) contains that day's transactions and information of orders and activities that were all collated and appended to the news report. In this case, as elsewhere, the report was sent from Ahmedabad back to Shahjahanabad to confirm due receipt of orders not lost in transit. The original (*asl*) of the *yaddasht* reached Shahjahanabad while the copy (*naql*) was preserved in Ahmedabad for their internal purposes. The *khan-i saman*'s clerks verified if the recommendations had been grasped and digested as per imperial regulations. If an error was detected in the Ahmedabad version, a corrective was sent forthwith for the provincial *divan*s to rectify the interpretation of the orders and comply with the correct procedure. That too would have given rise to another *yaddasht* and the back and forth. The order was at least copied twice or several times by different hands to avoid scribal errors, where an omission or a commission error could be financially costly for the Mughal State and professionally for the scribe. The contents of orders were transmitted into a memorandum for implementation and verification. The Mughal chancery's procedures minimized misreading documents, their text, and content.

Mirʾat-i ahmadi does not contain the original copy (*naql*) document preserved in Ahmedabad. Instead, the compiler collected the document's content perhaps from the papers available to him and included it in his work. The document was most likely titled "imperial news report on the confiscation of the *mansabdar*s' properties and goods" (*vaqaʾiʿ-i dargahi dar bab-i zabt-i amval-i mansabdaran*) by the author as *yaddasht*s were routine records that were dated without titles. Here, *mansabdar* used for the text heading should ring a bell. In Mughal historiography, *mansabdar* has been used exclusively for the elite *jagir*-holding military officers. In Mughal official parlance, *mansab* merely meant office and *mansabdar* a holder of office at any capacity including the lower chancery officers like clerks. Bearing in mind the documentary placement in imperial-provincial spheres, let us unpack the legal *provisos* of Iftikhar Khan's orders. The matter of deciding escheat and succession pertained to the properties of *bandaha-yi padishahi* (imperial servants). These concerned officials who were paid cash salaries (*tankhva*) at the provincial level and not at all the elite *mansabdar*s, who were given benefices (*jagir*) to administer and earn from. In the latter case, given their direct service under Aurangzeb ʿAlamgir's command, escheat and succession fell under the jurisdiction of the imperial court.

The order to Ahmedabad included the following three clauses and sub-clauses (*shurut*):[233]

(1) if the person is not indebted to the government (*mutalaba-yi sarkar-i vala bar zimma-yi*

[233] Mughal orders were always issued with detailed clauses and sub-clauses of how the possible legal situations had to be handled by subordinates. Often, this vital method of translating jurisprudence into administrative procedures, as happens even in our own legal institutions, has been overlooked in the study of Mughal documentation. These clauses (*shurut*) were based on Hanafi formularies for contracts and documents. Unlike the numbering of clauses and sub-clauses we are used to (for example, clause 1 (a)), in the Mughal chancery style, the entire order was written continuously without any breaks or punctuation as was the convention in premodern writing practices. However, the clauses themselves were differentiated by templates of conditional sentences starting with *agar…bashad* (if such is the case) followed by the rule to be applied. Later, I will discuss the role of documentary templates that made it easy for standardized identification and compilation of orders. The empire's wheels ran on well-oiled cogs.

u na bashad) and dies without an heir, then the *tahvildar* (bursar) should entrust the person's entire wealth to the *bayt al-mal*.

(2) if the person is indebted to the government for a value less than his property, and dies without a heir, then the share of the monetary value of his assets equivalent to the debts should be used to repay the *sarkar* dues (current account of government revenues); the rest confiscated to the *bayt al-mal*.

(3) if the person has legitimate heirs, then, the property has to be confiscated within three days (*sih ruz az tarikh-i faut*) and divided in the following manner:

   a. if the person's property value is higher than his debts due to the government, the rest after deducing debts should be divided among the heirs.

   b. if the person's debts exceed his property value, all of it has to be recovered by the government for the liquidation of debts [*nota bene*: to the accounts of the *sarkar* (current revenue accounts) and not the *bayt al-mal*].

   c. if the person owes no debts to the government, then, his entire property should be divided among the heirs.

These provisions do not violate any laws. They respect a variety of legal provisions of Hanafi law, accounting procedures, and respect for personal property, which collectively formed the legalistic expression of Timurid justice (*ʿadl*). Justice was limited by pragmatic financial and fiscal prudence. From the legal angle, clauses 1 and 2 pertain to the State's right to escheat as the seventh and last designated class of heirs in Islamic inheritance laws when individuals died heirless. Clause 3 recommends division of properties, perhaps, based on the wishes and religious/sectarian affiliation of the heirs. From the angle of financial operations, debts are credited to the *sarkar*'s

current account. Any additional property escheated devolved legally to the *bayt al-mal* and not the *sarkar*.

Moving forward from the legal provisions and financial accounting, let us explain for whom the *khan-i saman*'s order was meant. I reiterate that this was not Aurangzeb ʿAlamgir's imperial decree (*farman*), which alone could make or unmake claims of *mansabdar*s who were under his direct command. Which reasoning was advanced in the three sub-clauses of clause 3 that suspended escheat and recommended succession, instead? The answer lies in the order's jurisdiction: lower officers who were paid cash salaries (*tankhva*) and did not control land or property assets of the Mughal State. Their earnings and wealth were personal property to which the *bayt al-mal* had no legal claim (unless in the first two cases when individuals died heirless). Therefore, the entire wealth was divided among heirs, unless debts had to be settled. Settling debts was not escheat; it was a revenue transaction of the Mughal *sarkar*'s current account. The three-day upper limit (*sih ruz az tarikh-i faut*) for confiscation and inheritance reveals that these rapid operations were possible only for petty officials. For the elites, it took weeks and even months to finalize the value of their assets. In Shayista Khan's case, for instance, the valuation was finalized at the latest by January 24, 1694 while he was dead since December 18, 1693.

In the repeated assertion of the contents of this document out of context, its legally inflected language, hierarchy in Mughal accounting and chancery as well as the property claims has been lost on us. Texts not only have a context; texts form the contextual ecosystem of themselves. Rules as *dastur al-ʿamal* issuing from this document in 1666 would remain in vigor unless and until superseded by a new one that abrogated the old one.

Chancery officials' knowledge was not limited to the above-mentioned accounting rules (*siyaq*). It was intermingled with a high degree of acquaintance with Hanafi legal terminology as a product of their services to the Mughal State over generations (religious identity had nothing to do with it: *munshi*s and *divan*s from Kayastha and other non-Muslim communities were adept at these legal terminologies). The *khan-i saman*'s order to Ahmedabad on escheat contained careful legal wording that was the hallmark of Mughal imperial orders, a point that has been completely disregarded. The *khan-i saman* calls upon his subordinates to ascertain the deceased's *dhimma* (Persian *zimma*, obligation, financial liability). While Hanafi jurists have defined *dhimma* in different ways, let me pick a definition as preserved in an Arabic manuscript that was housed in the Timurid imperial library: "*dhimma* in ordinary language is an expression of agreement whereas legally it is an expression of the quality of the person's capacity for the offer and the revocation [of contract]" (*al-dhimma fi'l-lugha ʿibara ʿan al-ʿahd wa fi'l-shariʿa ʿibara ʿan wasf yasir al-shakhs bi-hi ahlan li'l-ijab wa'l-istijab*).[234] As an extension of legal capacity (*ahliyya*) of persons to contract, *dhimma* is the liability or obligation that falls upon the person for his contractual obligations. The person's legal capacity endows him with the ability to contract as much as makes him liable to honor contracts. The ability to contract engenders the responsibility to honor contract: they are two sides of the same coin. In credit and debt relations, *dhimma* is the debtor's financial obligation to repay his loans. Unlike other kinds of obligations, here, his death does not absolve him of his financial obligation even though by virtue of death he has ceased to have legal capacity. His wealth surviving his demise, their financial liquidation renders possible and safeguards the

[234] "Definitions of various legal terms," Ms. IO Bijapur 74, British Library, London, 52b. For a broader analysis of legal capacity in Hanafi jurisprudence, see Robert Brunschvig, "Théorie générale de la capacité chez les hanafites médiévaux," in *Études d'islamologie*, 37–52. For the legal character of *dhimma*, see Johansen, *Contingency*, 192 ff; Mahdi Zahraa, "Legal personality in Islamic law," *Arab Law Quarterly* 10, no. 3 (1995): 193–206.

creditor's right to the recovery of loans before succession. It was for no mean reason that Iftikhar Khan Sultan Husain, the *khan-i saman*'s scribes had specified *dhimma*/*zimma* in their orders. The *qazi* adjudicated the division of properties. The *tahvildar* recovered the state dues to the *sarkar*'s current account and escheated the rest of the properties to the *bayt al-mal*. These were provincial matters decided at the provincial level for lower officers though the real power of dictating terms and conditions remained vested at the imperial court. The extensive use of paper in the information economy and postal infrastructure for its material circulation by the seventeenth century had facilitated such centralization.

Escheat had continued unabated. Abu al-Hasan's properties were estimated at 68 million rupees and confiscated. In another case in 1665, Marhamat Khan Jumla's movable and immovable assets were confiscated after deducting debts due to the Mughal exchequer (*amval-i marhamat khan jumla dar sarkar-i khassa mutalaba zabt shuda ast*).[235] Let us take the highest-ranked Mughal officer, *Amir al-umaraʾ* Shayista Khan's case. In January 1694, Iʿtiqad Khan estimated that Shayista Khan (d. 29 rabiʿ al-thani 1105 AH/ December 18, 1693)[236] had left behind movable and immovable assets worth 40 million rupees at the time of his death. Though, the Rajput *vakil*, Meghraj reported to the Kacchawaha Rajput, Bishan Singh speculating rumors rife at court that Shayista Khan's properties and liquid wealth could have been as high as 160 million rupees.[237]

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[235] "*Vaqiʿa* dated 1 jumada al-thani julus 8 (December 7, 1665)," *Akhbarat*, MS 34, National Library of India, fol. 108a.

[236] In Mughal historiography, Shayista Khan's year of death has been dated to 1694 by erroneously converting the year 1105 AH found in *Maʿasir al-umaraʾ*. 1105 AH corresponds to 1693–94. I have provided the accurate date of Shayista Khan's death, 29 rabiʿ al-thani 1105 AH corresponding to December 18, 1693 O.S., transmitted on the same day by Lalchand, a scribe at the Kacchawaha Rajput chancery to Hari Singh, the *zamindar* of Lamba. "Rajasthani letter from Lalchand to Hari Singh dated pausha sudi 2, 1750 VS (December 18, 1693)," Doc. no. 151, *Khatuta hindi ahalakarana*, Bundle no. 1, Rajasthan State Archives, Bikaner.

[237] "Persian *vakil* report from Meghraj to Bishan Singh dated 7 jumada al-thani 1105 AH (January 24, 1694)," Doc.

Indeed, this contemporary account of the enormity of Shayista Khan's accumulated assets is corroborated by Shah Nawaz Khan a few decades later: "The property (*mal*), which after [Shayista Khan's] death was escheated to the *sarkar-i padishahi*, was beyond conception. Though repeatedly, articles such as gold and silver vessels, have been taken for royal use, there are numerous locked vaults in the Agra Fort full of his goods."[238] While Shah Nawaz Khan may not have known the actual estimation of Shayista Khan's worth, his description substantiates the fact that the *divan-i buyutat* had deposited other movable assets into the treasury vaults of Agra where he died. Shayista Khan's immovable and movable properties elsewhere in the empire were also sequestered and escheated. This included his *haveli* opposite the Red Fort's Lahori Gate at the entrance of Chandni Chowk. Perhaps, there was no better prime property in all of Shahjahanabad. In the next two decades, the *haveli* changed several hands. Asaf al-Daula Asad Khan coveted its allotment. His son, *Amir al-umaraʾ* Zulfiqar Khan continued to enjoy residence over there until 1713.[239] His successor as *Amir al-umaraʾ*, Saiyid Husain ʿAli Khan occupied the mansion making it somewhat like the "official quarters" of the Mughal *Amir al-umaraʾs* (Lajpat Rai Market stands on its site in today's Old Delhi). They could ride a horse for a few minutes until the Red Fort's *jalau khana*, dismount, and walk the remaining few hundred meters to attend to the needs of their Padishah and his gigantic empire. None of them had legal title to this *haveli-i nuzuli* (state-owned courtyard mansion), *de jure* Mughal State property.

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no. 922, Persian Vakil Reports, Bundle no. 1, Rajasthan State Archives, Bikaner.

[238] Shah Nawaz Khan, *The Maásir-ul-umara*, ed. Maulavi Mirza Ashraf Ali, vol. 2 (Calcutta: Asiatic Society of Bengal, 1888-1891), 605 (Shah Nawaz Khan, *The Maāthir-ul-umarā, being biographies of the Muhammadan and Hindu officers of the Timurid sovereigns of India from 1500 to about 1780 A.D.*, trans. H. Beveridge and Beni Prasad, vol. 2 (2) (Calcutta: Asiatic Society of Bengal, 1952), 835). Translation modified.

[239] Blake, *Shahjahanabad*, 77.

On real estate such as Shayista Khan's *haveli* that were state-owned, the Mughal State financed courtyard construction and repairs. The occupants had usufruct rights alone. The logic of escheating movable and immovable properties did not violate Islamic inheritance law. These assets had been accrued owing to state service. In virtue of the office, one had occupied *haveli*s, gardens, *jagir*s, which generated incomes and enjoyment, legally speaking usufruct (*manfaʿa*/*istighlal*) with no claims of ownership. As long as one was occupying office, one could enjoy its fruits. Upon the termination of office due to death, retirement, or dismissal, *ʿayn* (substance), the physical properties were confiscated and *dayn* (debts and obligations) were repaid from the movable assets, liquidating all rights and absolving the claimants' *huquq* (interests) on these properties.

Wealth accumulated while in state office was bifurcated between those earned as a direct consequence of holding office and a small portion treated as personal properties set aside for heirs (not escheatable). Any pension to widows and minor dependents were estimated in cash emoluments, household expenses, and the assignment of a lower-rung *haveli* that invariably might have led to a down-grading of their lifestyles. Very often, since adult sons were already in Mughal service, they were promoted, their ranks and *jagir*s increased for the better household management of staff and servants. Often, they inherited their father's titles as a mark of honor. Shayista Khan's son, Buzurg Umid Khan had died the same year while his daughter, Bibi Pari (prince Muhammad Aʿzam's wife) had died in 1678. This fact is not inconsequential. In the absence of agnatic and Qurʾanic heirs, even if Shayista Khan's wives were alive, "distant kindred" had the legal right to a share in the deceased's estate under inheritance laws (Shayista Khan was Shiʿi). Aurangzeb ʿAlamgir himself was one of the "distant kindred" in this case. Shayista Khan was his maternal uncle and Arjumand Banu Begum's brother, making Aurangzeb ʿAlamgir a legitimate heir to a part of Shayista Khan's succession. We do not know if the Padishah took his share. Very well, if

he had, his share would have gone to personal accounts he kept in his individual capacity, the debts repaid to the *sarkar-i aʿla*, and the escheated properties devolved to the accounts of the Mughal State's *bayt al-mal*, the public fund and its financial endowment he managed. Each of them was maintained separately for accounting purposes. Shayista Khan's movable assets were kept in safe-keep in the Agra Fort's vaults for decades, his *haveli* had been allotted to his successors in the office of *Amir al-umaraʾ* (and not his possible distant legal heirs), and, may be, the Padishah inherited a few lakh rupees worth wealth for himself. While we do not know how the precious items stored in Agra were used, we may assume they were taken out for the personal consumption of the Timurids as well as state consumption such as gift-giving.

Exceptional Circumstances for Applying Inheritance Laws

Sequestration was vital for another fundamental financial operation sanctioned by Hanafi law, or, for that matter, any law. Properties were partitioned only after the reimbursement of debts (*dayn*) due to public and private financiers—a principle basic for the financial liquidation of all households. Pending loans taken from the Mughal exchequer were repaid. They included non-usurious but interest-accruing *mutalaba* (installment-based annuities), *musaʿadat* (short-term loans), and *dast gardan* (interest-free advances), which were repaid to the state exchequer (*sarkar*). The *khan-i saman* (superintendent of the household) consulted the *mustaufi* (comptroller) to repay the debts in coin, and, if that were insufficient, the value of bullion, ornaments, vessels, and expensive articles were estimated and used to repay the remainder of the debts. As discussed earlier, debt repayments were credited to the current account of the *sarkar-i ʿala* and escheated property to the accounts of the *bayt al-mal* (public fund). In the Mughal State exchequer's accounting practices (*siyaq*), the public fund contained assets (stock) while the current account

dealt with incomes and expenditures (flow). All these minute legal procedures are tedious to explain today but they are necessary for us to pay attention to what was happening in the Mughal world. The Mughals were like fish swimming in the water; they did not have to explain the techniques of swimming amongst themselves!

The death of *mansabdar*s was the moment to decide both shares of inheritance for the heirs and the share of escheat to the Mughal State. As *saltanat*, the Mughal polity was nominally responsible for applying succession for Muslim subjects. That was simply its legal obligation; though it was complicated to implement. The Mughal chancery had no legal right under Islamic law to decide the succession for non-Muslims. Nor did other legal systems like Brahmanical *dharmasastra* permit it since inheritance was intimately bound to kinship and ritual as much as property. Did the Mughals apply Islamic inheritance law only to Muslims? Yes, but that was because unlike pre-emption, sales, loans, power of attorney, *qazi* courts, etc., inheritance was a Muslim civil matter in Islamic law that was not applicable to non-Muslims. From the logic of Islamic statecraft and its *raison d'état*, Aurangzeb ʿAlamgir had no legitimacy to intervene in non-Muslim property division (unless, of course, a non-Muslim asked him or a *qazi* to arbitrate; such instances can be found occasionally). The Mughal State, therefore, in its legal normativism, allowed freedom for its non-Muslim subjects to follow their kinship patterns (the conflicts surrounding the succession to the Marwar *gaddi* in the late 1670s were a matter of political negotiations).

In determining succession and inheritance, the Mughal practice depended on two elementary conditions. It applied only to Muslim elites on their inheritable kinds of property. Only personal property, and not, say a land grant or a *jagir* could be inherited. Since grants and privileges were only a payment in lieu of service and produced no property effect whatsoever for the grantee or

any obligation for the Sultanate to respect them, they were confiscated back. In Hanafi law, the Muslim State's *bayt al-mal* (public fund) is the last of the seven designated classes, three principle and four subsidiary classes of heirs.[240] More precisely, "…the Treasury is entitled only by way of escheat to the estate of a person who dies intestate without any blood relative."[241] As the last class of the subsidiary heir, the Mughal State had legitimate legal rights to inherit property that had no owner, designated as *mal-i bi-tan* (bodyless properties). Intestate property was escheated after agnatic, Qurʾanic, cognatic, collateral heirs received their respective shares of the designated value of inheritable properties. The rest reverted to the *bayt al-mal*. If no legitimate heirs could be found, all the property reverted to the *bayt al-mal*.

Very early in Aurangzeb ʿAlamgir's reign, Husam al-Din Khan, Shah Jahan's *bakhshi* (paymaster) of Deccan, *subadar* of Udgir fort, and *faujdar* of Telangana, died in 1659. Nearly a century later, when Shah Nawaz Khan composed his monumental compendium of the Mughal officers, *Maʾasir al-umaraʾ* in mid-1750s Aurangabad, he could not locate Husam al-Din Khan's year of demise in any of the chronicles.[242] Yet, Shah Nawaz Khan knew nothing while composing his compendium that documentary evidence for the succession to Husam al-Din Khan's estate survived in the Mughal records that had been bundled up in one of the chambers of the Aurangabad Fort. This true attested copy (*naql muvafiq-i asl ast*) bears documentary testimony to the intestate

[240] Asaf A. A. Fyzee, "The Fatimid Law of Inheritance," *University of Malaya Law Review* 1, no. 2 (1959): 249. For a general overview of Hanafi inheritance laws, see Lucy Carroll, "The Hanafi Law of Intestate Succession: A Simplified Approach," *Modern Asian Studies* 17, no. 4 (1983): 629–70. Also see David S. Powers, "The Islamic Inheritance System: A Socio-Historical Approach," *Arab Law Quarterly* 8, no. 1 (1993): 13–29.

[241] Noel. J. Coulson, *Succession in the Muslim Family* (Cambridge: Cambridge University Press, 1971), 243.

[242] Shah Nawaz Khan, *Maʾasir al-umaraʾ*, vol. 1, 586 (Eng. trans., vol. 1, 652).

succession of Husam al-Din's properties that the imperial court decided in late 1659.[243] Aurangzeb ʿAlamgir had finally secured his throne in Shahjahanabad. Dara had been captured and decapitated in August 1659; a major threat was no longer looming around the new Padishah's neck like the dangling sword of Damocles. On November 11, 1659, Husam al-Din's two sons, Suhrab Khan (who had aided Aurangzeb ʿAlamgir in the Battle of Succession and recently been appointed *faujdar* of Balapur in Berar) and Murtaza Quli received an increase in their *mansab* rank as well as a *khilʿat* (robe of honor) on their father's demise. A list of Husam al-Din's movable and immovable assets (*amval*) were prepared and forwarded for verification to the imperial court. Husam al-Din's debts, more properly, pending installment payments (*qist*) to annuities he had sold to the Mughal exchequer (*baʿd az vusul-i mutalaba*) were realized. The rest of the properties were partitioned (*qismat*) in accordance with Islamic inheritance laws (*muvafiq-i shariʿat*). In such cases, the State was actively involved in the partition because it had to first ensure that dues to its own exchequer had been reimbursed before their release for inheritance. The imperial court ordered that Husam al-Din Khan's wives, minor sons, and daughters, i.e., his dependents be sent to one Asman Jah's house where they could be taken care of at the time of mourning. That paternal instinct was Aurangzeb ʿAlamgir's *tadbir* (management) of officers and their families who were part of his larger household. A thousand miles away from the Deccan, Shahjahanabad called the shots!

As per Islamic law, the *divan-i buyutat* appointed a *qassam* (partitioner), who made a monetary assessment and evaluated an individual's estate inventory before claims of each class of

[243] "*Naql* (copy) of the *farman* issued by Aurangzeb ʿAlamgir to the descendants of Husam al-din Khan dated 25 safar 1070 AH (November 11, 1659)," Doc. no. II/357, Telangana State Archives and Research Institute, Hyderabad, in *Mughal Documents: A Catalogue of Aurangzeb's Reign (1658-1663 A.D.)*, vol. 1, ed. M. A. Nayeem (Hyderabad: State Archives, Government of Andhra Pradesh, 1980), 206; VII-IX.

heirs were decided. This was a well laid-out rule in Hanafi law dating back to at least as early as the great Transoxanian jurist, Marghinani (fl. eleventh century) who prescribed that either the *qazi* or the State appoint an agent for estimating and dividing properties. Marghinani had advised the public treasury to pay an allowance for the partitioner to carry on his duties.[244] Succession was not only limited to state officers. In cities, the Mughal *qazi*s routinely decided inheritance and appointed partitioners. Though, for inheritance to take place, one had to own enough personal properties and wealth, a possibility few had. Agrarian land was largely outside the scope of inheritance as it was Mughal State land. While peasants may have divided agrarian lands when joint families broke up, they were not inherited as personal property but tilled separately.

In virtue of public office, Mughal officers enjoyed income from state property such as *jagir*s. Any wealth accumulated therefrom was the Mughal State's wealth. This reasoning was also crucial for the larger financial and political strength of the Mughal exchequer and its empire. The Mughal treasury accounts would always swell. No Mughal officer was left to strengthen his powers and wealth in any region that could prove costly to the *saltanat* and its self-preservation. A powerful *mansabdar* in a far-flung province could easily rebel if he had accumulated wealth over successive generations that had served the Mughals. Within the property logic, a delicate balance had to be struck in deciding inheritance of wealth generated at the intersection of state lands and public properties. The estimation of private properties was always a politico-legal decision fraught with difficulties of assessing its exact value. Moreover, revenues maintained, let us say, Shayista Khan's military contingent of 5000 cavalrymen (*savar*), their horses down to the horse feed, and his extended family and a vast retinue of his menial servants (*shagird pisha*), agents (*vakil*), and staff

[244] Shaikh Burhan al-Din Abi al-Hasan ʿAli Marghinani, *The Hedaya, or Guide: A Commentary on the Mussulman Laws*, trans. Charles Hamilton (New Delhi: Kitab Bhavan, 2014), 566.

as much as poets, scholars, and *ʿulamaʾ* he may have sponsored. It was difficult to determine what part of the revenues were Shayista Khan's personal income unlike in the case of lower officers who received daily or monthly salaries. It was virtually impossible for the Mughal imperial authorities to determine Shayista Khan's personal property since much of it was accumulated from exactions, and other forms of wealth accumulated in trade (*sauda*), gifts, underhand dealings, and embezzlement kept secret from the imperial court. The Mughal officer's *jagir*s generated *huquq* (claims) of usufruct that gave rise to income and wealth accumulation. It was only *ex post facto*, on Shayista Khan's death that the full value of his assets was revealed when mansions were raided and other movable assets like gold, silver, furniture, books, etc., were confiscated. The accumulated wealth was meant for a luxurious life of the Mughal *Amir al-umaraʾ* while he was alive and not to pass it on to his heirs. The legal reasoning was straightforward. Even goods, which were not land or money could be considered an accumulation based on the power of holding *mansabdari*. Hence, they had to be treated with the same logic of usufruct and confiscated or escheated after death. Properties had been given for usufruct (*manfaʿa*) while the *bayt al-mal* retained the ownership of the properties' substance (*ʿayn*). On death, the *ʿayn* reverted to the Mughal State in the form of all kinds of *amval* (goods) generated from imperial benefices.

This being the general scenario for all Mughal officers, demarcating the value of personal property and personal income was not self-evident. The Mughal State estimated a small share of the wealth produced at the intersection of state service and private accumulation as personal property and let the inheritors succeed to them. While this procedure seems to portray a state unwilling to recognize personal properties, it had two economic rationale. One was prohibiting illegal privatization of state properties through long-term possession and transfer to the detriment of the State. Simultaneously, such wealth accumulation and concentration of power in regions

where the *mansabdar*s were posted could pose a threat as they indeed did by claiming autonomy in the eighteenth century when Mughal imperial power had waned. The other, determining personal share of wealth for descendants, was a difficult calculation to make given that no part of the prebendal rights were meant for accumulation. In his *A Theory of Economic History*, the noted economist, John Hicks made a poignant point that governments before the 1800s were unable to determine personal income in a straightforward sense.[245] Personal incomes and wealth of the elite derived from a variety of fiscal largesse, landholding properties, revenue farming, and financial privileges such that actual personal income was difficult to estimate in accounting terms. Hick's reminder about European governments applies equally to the Mughals. The small share estimated as inheritable wealth therefore depended on the kind of dependents who had survived, the needs of the family households that often lived lavishly, and the rank ordering within the *mansabdari* system.

Not taking such complexities into account, two types of historical errors have been made in explaining the Mughal application of Islamic inheritance laws. Satish Chandra incorrectly claims that Aurangzeb ʿAlamgir, despite his adherence to the *shariʿa*, rarely respected Islamic inheritance laws, and instead, escheated property to the State's accounts.[246] This is a category mistake as much as an historical error that distorts the interpretation of Mughal property regimes. Inheritance laws (*faraʾid*) applied only to *tamlik* (personal property, literally "ownership"). As we saw in Shayista Khan's case, properties under his possession were escheated while in Husam al-Din's case, they were not. This was for the very simple reason that the property had been accumulated owing to

[245] John Hicks, *A Theory of Economic History* (Oxford: Oxford University Press, 1969), 98–9.

[246] Chandra, *Historiography*, 104.

state services while they were permitted for usufruct. The Mughal Court had the final say. Chandra expects the Mughals to apply English common law when Aurangzeb ʿAlamgir was surrounded by the leading intellectual luminaries of his age to tell him what law he had to follow! Often, neglecting the normative stipulations of Islamic law as well as the political disposition of Timurid ideals, such arbitrary and contradictory opinions have been laid at the threshold of Aurangzeb ʿAlamgir's court. Athar Ali too makes another kind of category mistake that all Mughal rulers violated inheritance laws by escheating property, and thus being not too concerned about the *shariʿa*.[247] Chandra takes it positively since it supposedly proves that Aurangzeb ʿAlamgir was not so strict with Islamic law. Ali though laments that the Mughals did not respect the private property of Muslims by escheating them. This too is an erroneous assumption that ignores the fact that the *bayt al-mal* (public fund) is explicitly considered a rightful inheritor under Islamic inheritance law. This is for the simple reason that the Mughal historical records formulated within premodern Islamic legal norms and statecraft have been read *as if* they were governed by Muslim "personal laws" guaranteed within the constitutional provisions of a modern republican state.

The above historical errors are even more astonishing when the East India Company administration, ideologically tracing its sovereignty as flowing from the Mughals, recognized the utility of enforcing the State's right to escheat heirless Muslim property as per Islamic law. The colonial application of escheat rules of Islamic law needs to be analyzed against the development of the colonial legal system and its consequences for Muslim property rights in the subcontinent. As early as 1810, the Bengal administration justified applying escheat to Muslims since that provision existed in Islamic law.[248] However, the EIC administration did not recognize escheat for

[247] Ali, *Mughal Nobility*, 63–8.

[248] See "The Bengal Regulation 19 of 1810" in Andrew Lyon, *Guide to the law of India, repealed and unrepealed:*

Hindus based on a similar reasoning that the *dharmasastra* forbade escheat for Brahmins (extended to imply all castes). In premodern "Hindu law," the King had no right to take an heirless Brahmin's property; he was expected to donate (*dana*) it to another Brahmin. That is, the "state" had no role in private property. Indeed, one Muslim property dispute went all the way to the Privy Council, the highest court of appeal in British India in 1860. The Privy council decided in favor of escheat since not only Islamic law but also the common-law maxim *bona vacantia* allowed property appropriation and escheat to the British Crown. The judges added, "private ownership not existing, the State must be owner as ultimate lord."[249] In analyzing this case, Roland Wilson (1840–1919) meticulously argued that the Sultan's escheat right, which had been guaranteed "for the benefit of all Moslems" had to be substituted "for the benefit of all Indo-British subjects" in British India. Yusuf Ali who re-edited Wilson's work in 1921 disagreed with this "erroneous" position. Ali had an ingenious idea of creating private Muslim funds in the absence of the *bayt al-mal* rather than escheat Muslim private property to the "non-Moslem government of India" *aka* the British Government of India. These forms of creating new modes of reasoning for generating public norms out of private interests in the absence of premodern political mechanisms illustrate the transformation of legal consciousness in the subcontinent once the Sultanate had ceased to exist in 1857. Such a proposition, while meaningful in British India, would have been meaningless but also unthinkable in seventeenth-century Mughal Hindustan when the *bayt al-mal* indeed existed. No subject would have dared propose an alternative private public fund contesting and competing

showing at a glance the law on any subject, where it is to be found, and how far it is in force (Bombay: Thacker, Vining, 1872), 48.

[249] Roland Knyvet Wilson, *Anglo-Muhammadan Law: A Digest preceded by a Historical and Descriptive Introduction of the Special Rules Now Applicable to Muhammadans as such by the Civil Courts of British India, with full references to Modern and Ancient Authorities*. Fifth Edition. Revised and Brought Up-to-Date by A. Yusuf Ali (Calcutta/Simla: Thacker, Spink & Co., 1921), 265.

with the *bayt al-mal* under Aurangzeb ʿAlamgir's trusteeship. The colonial regime though benefited from escheat despite elite Muslim opposition to a non-Muslim state becoming party to escheat meant for the Muslim polity's *bayt al-mal*!

Today, the Government of India exercises the right to escheat property irrespective of religion. The Mughals applied it only to Muslims as it was legitimate and legal for the *imam* to do so but not to "Hindus" as they did not claim legitimacy to decide their succession. The British ideology of upholding the "religious laws" of each community individually and separately meant solely Muslim property was escheated in British India. The Indian Republic, based on the secular nature of its constitutional order, applies the English common-law maxim of *bona vacantia* uniformly much more than the colonial administration ever did! Irrespective of religion, all heirless property is escheated today. Then, the Mughal, the British imperial, and the Indian Republican forms of political regime have all used a legal provision of escheat (existing in Common law and Islamic law but not in Hindu law) with distinct legal normative rationale in mind. While superficial similarities can be found among them, each state form exercises control over the life and property of its subjects (now citizens) through the idea of *saltanat*, colonial empire, and constitutional republic—the three predominant state forms that have existed since Aurangzeb ʿAlamgir ruled the subcontinent. The legal and ethical ideals of each state form, as much as their effects on those subjected to it, cannot be conflated. One cannot be measured against another. More importantly, anachronistic judgmental criteria lead to aberrations that Aurangzeb ʿAlamgir went against the *shariʿa* norms of succession for the sake of political expediency.

Conclusion

Once we recognize Mughal State properties in urban areas, immovable and movable properties, escheat, sequestration, confiscation, transfer, and succession in the backdrop of the norms of Hanafi law, we can verify decisions taken at the imperial court and the provincial levels as a coherent set of practices that were not orders issued by Aurangzeb ʿAlamgir at the whim of a hat. We can plot the distribution of cities along lines of state lands and lands freely available for construction and sale, mansions, immovable assets (either the land itself or attached with the built-up area), *purajat* under Rajput and other elite officers' control, *ganj*s, private and public gardens, etc., since Mughal cadastral surveys (*kasra*) themselves have not come down to us. City *muhalla*s (neighborhoods) were *tamlik* lands where alone *qazi*s authorized legal sale and transfer of property through *baiʿnama*s (sale deeds). All these phenomena represent the internal logic of regulating urban spaces and land use akin to masterplans of our own cities that divide them along residential, commercial, and municipal areas and urban forest cover. In deciding only on the succession of the Muslim officers, the Mughal State was, very much so under the ʿAlamgiri dispensation, contrary to many received ideas, an institution that exercised far greater control over the escheat of intestate heirless personal properties of elite Muslim subjects than non-Muslim ones. None of these practices were based on customary rules but well-established legal claims, proprietary conditions, and adjudicatory rules. Occupying real estate created *huquq* (interests and claims) distributed on the basis of contractual obligations delimited by the conditions of *tamlik* (ownership) *manfaʿa* (usufruct), *ʿaqar* (immovable property), and *faraʾid* (succession). While in office, *mansabdar*s enjoyed the fruits of state property; their personal accumulation and succession was beyond question. Mughal historiography has often portrayed escheat with a negative outlook as if it were a malevolent practice. Within the property system of the Mughal State and Hanafi contractual and

inheritance laws, escheat "rendered to Caesar things that were Caesar's," or, more accurately, rendered to the World Conqueror's trust things (*amval*) that were under the World Conqueror's trusteeship. The debts were reimbursed to the *sarkar*'s current revenue accounts. The rest of the escheated property was state property given in the first place for usufruct; it reverted to the *bayt al-mal*. Aurangzeb ʿAlamgir neither owned the *bayt al-mal*, the sovereign public fund and endowment of the Mughal State nor the *sarkar*'s *khizana* (treasury).

These practices were in conformity with three norms: Chinggisid *yasa*, Timurid practice since Babur, and Hanafi law, depending on the purposes and types of property for which escheat was applied or not. It was not in the Mughal State's interest nor in its logic to devolve its hard-earned state properties to be left in the hands of the *umaraʾ* who constituted a threat, as they would from the 1730s, taking advantage of Mughal weakness and declaring themselves autonomous. Escheat had its financial advantages to the *bayt al-mal*: not creating proprietary claims and inheritance of state property guaranteed that it never devolved to others to the detriment of the Mughal State itself.

Within its legal property-contractual order, land resource allocation was a rational process whose aim was the perpetuation of the Mughal State and its financial capacities. The desire to sovereignty is always already a desire to perpetuate authority, power, and command. Moreover, given the fact that the privileges for courtyard mansions, gardens, and agglomerations were granted by the imperial court, at any point of time, the Timurids had the requisite information of all the properties held by any officer across their realms. They could be sequestered or confiscated, if need be, across the empire—a testimony to Mughal capacities as well as thirst for centralization. In the major cities, cadastral surveys and masterplans regulated and demarcated the ownership between public and personal properties. As I have shown, reconstructing these practices from

disparate sets of documents, court records, imperial decrees, inscriptions, chancery rules, Hanafi law, and rethinking hidden assumptions behind colonial mutations, lend towards an assemblage of Mughal urban masterplans.

The problems I have clarified in this chapter help better appreciate Mughal legal culture but also explore the layers of colonial discourse underneath the misunderstanding of Mughal legal mechanisms that arose with the emergence of colonial property regimes. The nineteenth century was a period of unprecedented creation of new property rights that had been far more restrictive until then. Part of the difficulty in assessing the circumstances under which properties were claimed in the seventeenth century arise since individuals and families across northern India filed petitions with British Indian administrators and courts for the confirmation of their inalienable rights under the logic of "real property law" over the properties they possessed. In a period when many of the older legal norms were no longer applicable and proprietorship uncertain, their possession was tenuous unless they acquired legal titles to ownership duly recognized by the colonial regime. As we saw earlier, imperial privileges to the settlement of *purajat* (agglomerations) under Mughal rule had to be reconfirmed when a new Padishah or *raja* acceded to power. Claims over the management of *purajat* were subject to revocation. They were dependent on negotiations and satisfactory performance in Mughal eyes. The Rajputs got their property rights in *purajat* across the subcontinent confirmed by British district commissioners within a few years following the "Proclamation, by the Queen in Council, to the Princes, Chiefs, and People of India" in 1859.

In the intervening years of the eighteenth century, many of these property claims were affected through confiscations, evictions, and unsettlements in the wake of the military disturbances and instabilities created by Nadir Shah's and ʿAbdali's raids from the northwestern

frontier and the Maratha forces pushing northwards from the Deccan to Hindustan, and, later, the British too in the east. The "short eighteenth century" was a tumultuous era for property claims, privileges, and guarantees the Timurids had secured for their elite subjects in Hindustan from the 1550s onwards. In such a scenario, no less than the famed scholar, Shah Wali Allah Dehlawi complained in a letter likely written in 1757 that there was hardly any safety for property documents. Wali Allah noted that many documents were dismissed as doubtful or confiscated, leaving their owners even in the imperial capital of Shahjahanabad with no way to prove their claims to the new warrior groups that triumphantly entered its fortified gates again and again.[250] Upon Nadir Shah's invasion, Saʿadat Khan's *haveli* outside the Kabuli Gate not far from Tis hazari was ransacked and looted. Nadir Shah's soldiers occupied Khan Dauran Khan's *haveli* near the Jamaʿ masjid. In 1757, the Afghans even dug up *Amir al-umaraʾ* Shayista Khan's former *haveli* just opposite the Lahori Gate hoping to find hidden treasures. The Rohilla Chief, Ghulam Qadir's lieutenants occupied Qamar al-Din Khan's *haveli* in 1788. Another Rohilla Chief, Najib al-Daula lived in Safdar Jang's *haveli* on the Yamuna banks in 1755–57.[251] Later, the British converted many of these mansions into residences, customs houses, and munition storehouses. The insecurities to life and property had become all too evident even to the Shahjahanabadi elite by mid-eighteenth century. The great grain markets, *ganj*s had been wrapped up and tucked within the walled city for the sake of security. The Mughal State, which instituted property regimes was itself under threat; it could hardly guarantee their contractual operations. The State and its institutions as much as their collapse matter very much in any society.

[250] Mahmood A. Ghazi, "Political Letters of Shāh Walī Allāh: A Critical Review," *Quarterly Journal of the Pakistan Historical Society* 30, no. 2 (1982): 95.

[251] Blake, *Shahjahanabad*, 75–82.

In this chaos of settling property rights by translating property claims originating from Mughal and other premodern regimes into "real property" law during the colonial transition, confusion and enormous sets of litigations ensued that continue to resonate in the region's legal problems and litigations. In 1775, Raisina Hill, the present-day seat of the Government of India, was an old *jagir* land that had lapsed to Mughal *khalisa* (*mahall-i qadim ki dar khalisa-yi sharifa qarar yafta bud*).[252] Raisina was given away as an *altamgha* grant (*wajh-i inʿam-i altamgha*). Not far from Shahjahanabad's Ajmeri Gate, crossing the Paharganj market, Jaisinghpura (the agglomeration controlled by the Kacchawaha Rajputs in whose neighborhood Sawai Jai Singh II constructed Jantar Mantar in 1724), and Rakabganj (around today's Church of Redemption), one reached this hill that was farmland well into the early twentieth century. The British bought Raisina Hill to build their new capital, New Delhi in 1912 from the farmers who tilled land over there. Interestingly, the descendants of some farmers are presently at court in an ongoing litigation claiming their ancestors were never paid compensation.[253] In Mughal Delhi, the Raisina Hill was the property of the *bayt al-mal*. The hill belonged neither to the farmers nor to the *altamgha* grantee, and not even to the *khalisa-yi sharifa*. The farmers owned the tax-deducted income of their produce. When it was an *altamgha*, the grantee recovered the taxes and when it was *khalisa*, the Mughal State exchequer did so. Today, Raisina Hill is once again public property, though of a very different kind. It belongs to the Government of India by virtue of the Transfer of Power from the British Government of India in 1947. Such successive change of hands in property control as

[252] Bisheshwar Nath Reu, "An Old Imperial "Sanad" Relating to Rāisinā or New Delhi," *Journal of the Royal Asiatic Society of Great Britain and Ireland* 3 (1931): 515–25.

[253] https://www.thehindu.com/news/cities/Delhi/Farmers-stake-claim-to-Raisina-Hill/article17014560.ece

https://www.thehindu.com/news/cities/Delhi/penniless-landlords-of-raisina-hill/article17333053.ece

Accessed on December 12, 2019.

well as iterations in concepts of property have been rendered invisible even in the country's prime real estate through the erasure of Timurid fiscalism. Mughal property claims lie buried beneath layers of hidden historical mutations.

The legal socialization of colonized subjects under the colonial regime of power as well as the ensuing legal transformation of the last two centuries have meant that we have largely forgotten the Mughal logic since the basis of that property in reality as well as in its practical purposes has long disappeared from our collective memory and legal consciousness.

Chapter 4

The Legal Semantics of Leasing:

Generating Incentives through Subcontracting

The Hanafi theory of *ijara*

By the early eighteenth century, *ijara* or "lease holding" had become a common framework for contracting cultivation rights across the Mughal realms in Punjab, Awadh, the Rajput principalities in Rajasthan, Kashmir, as well as the Deccan. *Ijara* is a practice originating in Islamic law and concerned the leasing of a wide variety of goods, labor, and usufruct in return for a pecuniary compensation. While land leases were perhaps known in the subcontinent before the emergence of Islamicate rulership, the kind of leases we find in the Mughal realms, the particular contractual obligations it gave rise to, and even the term *ijara* itself originate in Islamic legal discourse. The Muslim jurists devoted a complete chapter on *ijara* and provided an exhaustive treatment of its legal provisions in *fatawa* collections. Shaikh Nizam and his colleagues defined *ijara* in the following words: *sharʿan ʿaqd ʿala al-manafiʿ bi-ʿiwad kadha fi'l-hidaya* ("legally, the contract of the usufruct for a consideration as mentioned in the *Hidaya*").[254] *Ijara*, similar to *locatio* in Roman laws of bailments, concerns renting all kinds of commodities that can generate usufruct including labor and houses. The *ijara* contract is a transfer of usufruct of an asset giving rise to a pecuniary compensation considered money rent. The lessor retains the ownership and of

[254] Nizam et al., *FA*, vol. 4, 391.

the "substance" (*ʿayn*) of the property while he transfers the ownership of the usufruct (*manfaʿa*) to the lessee. In the case of land, this is its yield. Only those commodities can be leased whose consumption does not destroy the commodity itself. Say for instance, books, houses, land, labor can be leased as their use does not destroy the property itself. However, food grains cannot be leased as their consumption destroys their existence.

Postclassical Hanafi jurists since the eminent Transoxanian scholar, Muhammad b. Ahmad b. Abi Sahl Abu Bakr Sarakhsi (d. 1096) had developed a thorough analysis of *ijara* to overcome several legal difficulties that its use posed.[255] *Ijara* was prohibited on gardens (as they were meant for personal consumption that did not count as usufruct), pastures and canals (common goods for the benefit of all). This legal provision was clearly intimated to the Mughal *divan*s as per regulations that "pasture lands are not leasable" (*dihat-i raʿy ki ijara na dahand*).[256]

Ijara was legally authorized on *muzaraʿa* (fields) and *musaqat* (plantation of fruit trees and vines). In the seventeenth century, the latter kinds of leases were commonly given for commercial cropping like indigo and betel. The extensive use of the former type only appeared in the eighteenth century in the form of revenue-farming due to Mughal financial difficulties; they served as a means of short-term borrowing in the absence of long-term capital markets. However, *ijara* was particularly suited as an incentive for the cultivation of commercial crops. The Hanafis, unlike the Shafiʿis, allowed multi-year contracts with a three-year upper limit. The Mughals rented out on a three-year period and calculated the rent due based on the revenue estimates of the land in the

[255] Baber Johansen, *The Islamic Law*, 26–50. Also see Johansen, "Legal Literature and the Problem of Change: The Case of the Land Rent," in *Contingency*, 454–5.

[256] *Zavabit-i ʿalamgiri*, MS Or. 1641, 136a.

previous ten fiscal years. There could be no tacit renewal at the end of the agreement period; a new contract had to be concluded.

Jurists classified *ijara* into the following three categories (in ordinary usage, all three were interchangeably and generically called *ijara*):

1. *kiraʾ* (*locatio conductio rei*): the lease of all kinds of commodities such as lands, buildings, books, etc.[257]
2. *ijara* (*locatio conductio operarum*): the letting and hiring of services
3. *juʿl* (*locatio conductio operis*): the letting and hiring of labor

I analyze a few examples from Mughal practices to illustrate the legal complexities involved in *ijara* contractual rules and how they were used for a variety of purposes (a full-fledged account requires a monograph-length treatment). I do so in order to demonstrate that an historical analysis of Mughal *ijara* is not possible outside its legal mechanisms. The causes and consequences of *ijara* in how the Mughals made use of the provision at different periods and for different purposes are even harder to establish. Even before considering their proliferation in the eighteenth century as weakening Mughal central authority or examine them as palpable signs of decline, as has been done so far, their extensive use illustrates an innovative legal solution that existed for resolving economic mismatches in fiscalism (distribution of *jagir*s) and financial difficulties in raising Mughal State revenues. Indeed, *ijara* lease holdings are attested since the 1640s as the Mughal Empire extended further south into newly conquered territories. The wide use of lease holdings by

[257] Robert Brunschvig, "Propriétaire et locataire d'immeuble en droit musulman médiéval (jusque vers l'an 1200)," *Studia Islamica* 52 (1980): 5–40. I have included Latin equivalents from Roman civil law as they are more familiar in usage.

the mid-eighteenth century had been a result of financial weakness, where lease holding had become a substitute in large parts of the empire for the normal system of revenue collection.

Incentive Structures of the Mughal Rent: *ijara* and *khalisa*

Often depicted as monopolies, *ijara* were, in reality, leases to subcontractors. Shah Jahan gave away *ijara* contracts for indigo cultivation to merchants and equally gave loans. When Prince Aurangzeb was *subadar* (governor) in the Deccan, he held a *darbar* on November 21, 1637, starting from the fifth *ghari* of the day (8.28 AM). In those proceedings, Kamal, a *khidmatiya-yi sarkar-i aʿla* (palace guard) was leased the management of the Mughal *dak chauki* (postal system) for 10,000 rupees.[258]

Depending on the type of land—whether they were *khalisa* or *jagir*, lease holding had different consequences. When large parts of the *khalisa* were leased to the *mansabdar*s (that never happened until the eighteenth century), lease holding resembled revenue farming. Rather than directly assess taxes, the Mughals received a fixed money rent by leasing the collection of taxes. The Mughal State became a rentier vis-à-vis the *mansabdar*. In *jagir* benefices, it was a bit more complicated. *Jagir* itself was the right to usufruct that was leased out. The *jagirdar*, being neither owner nor lessee of the land, became a rentier. Under Islamic law, he leased his right to usufruct. The exceptional arrangements made for the Rajputs can seem even more muddled for us. Their principalities enjoyed the special status, *vatan jagir*. The term, *vatan jagir* belies what were in fact

[258] "*Siyaha-yi huzur* dated 13 rajab 1047 AH (November 21, 1637)," in Khan, *Selected Documents of Shah Jahan's Reign*, 48. The Mughals kept an absolutely meticulous record of all meetings and events and forwarded information from across the empire to the court that kept oiling the wheels of the empire. This should not by itself lead us to a conclusion that an archive existed, and reasons for this shall be delineated later.

permanent ancestral lands of the Rajputs. These feudatory regimes were kingdoms predating Timurid conquest of northern India. Nominally and retroactively the Mughals recognized them as permanent homeland benefices (*vatan jagir*) though their real characteristics hardly resembled *jagir*. Here, the Timurids had tweaked the Persian *iqtaʿ* system for accepting Rajputs as permanent tribute-paying feudatories. Rajput kingdoms would be reapproved as *vatan jagir*s by each Padishah. When *rajas* died, the Padishahs had the final say on the nominal heir apparent's succession to the *gaddi*. This was far from a mere formality of sending a *farman* and a horse with a *tika*. Rajput hereditary rules were subject to ratification. The conflicts over the succession to the Marwar *gaddi* led to an interesting scenario: the Mughals ended up leasing (*ijara*) the Marwar *vatan jagir* to the Marwar Rajputs.

The Rajput clans had been co-opted to varying degrees.[259] The Kacchawaha Rajputs had been much closer than the Marwar Rajputs. In the mid-seventeenth century, the Marwar rulers controlled agrarian tracts in seven *parganas*: Ajmer, Jodhpur, Nagore, Merta, Gujarat, Jaisalmer, and Ujjain (*mulaka ranaji pargana sata parasi ki hindagi kari ajamera va jodhapura nagora merato gujarata jesalaimera ujina ugara…*).[260] These were Marwar *mulk*. The Marwar ruler, Jaswant Singh (r. 1638–78) lost *jagir*s outside Marwar as he failed in Mughal military expeditions. Merta *pargana* was located between Marwari *vatan jagir* of Jodhpur and Ajmer, which was under direct Mughal *khalisa*. Merta was not too far from Nagaur under direct Rajput control. This proximity created for interesting dynamics. The possibility of tensions was high; the area was propitious for direct Mughal intervention. However, by 1679, two years before the full-blown

[259] See N. P. Ziegler, "Some Notes on Rajput Loyalties during the Mughal Period," in *Kingship and Authority in South Asia*, ed. John F. Richards (New Delhi: Oxford University Press, 1998), 15–51. Also see Shyamaldas, *Vira vinoda: Mevara ka itihasa* (New Delhi: Motilal Banarsidas, 1986).

[260] Map of Ujjain, no. 155, Kapad Dwara Collection.

confrontation between Marwar and the Mughals,[261] Merta had been taken back and reverted to Mughal *khalisa*; Indra Singh, Jaswant Singh's brother's grandson was instead given Marwar temporarily in return for 3.6 million rupees tribute. Diler Khan had personally facilitated this agreement; he petitioned to the Padishah that Indra Singh was the ideal candidate given his knowledge of Jodhpur and the Marwar region at large.[262]

Jaswant Singh died when Aurangzeb ʿAlamgir was on his way to Ajmer.[263] The Mughals confiscated the territories and appointed *kotwal*s and *amin*s to run them. Jaswant Singh's *havelis* in Shahjahanabad and Lahore too were sequestered. These plots show the ingenious powers the Timurids enjoyed; they could swiftly act to sequester and confiscate all properties and financial sources to threaten the claims of their subordinates. Both of Jaswant Singh's wives were pregnant and staying on in Lahore. Therefore, a conflict was bound to arise on whose son would inherit the *gaddi*, a matter on which the Timurids had final say. To complicate matters, both wives had sons later. In the 1679 battle against the Rathors, Anup Singh (2500/2000), Rao Karan's son was willing to pay 4.5 million rupees as *pishkash* for the confirmation of his succession; however, his claim

[261] Khafi Khan, *The Muntakhab al-Lubáb of Kháfí Khán*, ed. Maulavi Kabir al-Din Ahmed. vol. 2 (Calcutta: Asiatic Society of Bengal, 1874), 261. Also see Mustaʿidd Khan, *Maʾasir-i ʿalamgiri*, 175–6 (Eng. trans., 108–9). For Aurangzeb ʿAlamgir's battle with Mewar, see Robert C. Hallissey, *The Rajput Rebellion against Aurangzeb: A Study of the Mughal Empire in Seventeenth-Century India* (Columbia: University of Missouri Press, 1977); Sarkar, *History of Aurangzib*, vol. 3, 322 ff. For a literary narrative on the events surrounding the Mughal-Mewar conflict, see Cynthia Talbot, "A Poetic Record of the Rajput Rebellion, c. 1680," *Journal of the Royal Asiatic Society* 28, no. 3 (2018): 1–23. Also see Visheshwar Sarup Bhargava, *Marwar and the Mughal Emperors (A.D. 1526–1748)* (New Delhi: Munshiram Manoharlal, 1966); N. S. Bhati Chopasni, ed. *Studies in Marwar History* (Jodhpur: Rajasthani Shodh Sansthan, 1979); Masanori Sato and B. L. Bhadani, *Economy and polity of Rajasthan: Study of Kota and Marwar (17th-19th Centuries)* (Jaipur: Publication Scheme, 1997); Nandita Prasad Sahai, *Politics of Patronage and Protest: The State, Society, and Artisans in Early Modern Rajasthan* (New Delhi: Oxford University Press, 2006).

[262] "*Vaqiʿa* dated 27 dhu al- qaʿda julus 25/1092 AH (28 November 1681)," Doc. no. 367, *Akhbarat-i darbar-i muʿalla*, Bundle no. 9. Rajasthan State Archives, Bikaner.

[263] Mustaʿidd Khan, *Maʾasir-i ʿalamgiri*, 172–4 (Eng. trans., 106–7).

was not accepted as he was not direct in the line of succession to Jaswant Singh.[264] Only much later, Aurangzeb ʿAlamgir decided to install one of Jaswant Singh's sons, Adit Singh for 3.6 million rupees in *pishkash*.[265]

During the Rajput rebellion of Marwar in 1681, their *jagir* territories were converted into temporary *khalisa*, which was an extraordinary provision of confiscating the land for cultivation and maintenance under the direct control of the Padishah's *divan*s. While historians have seen this as a strategy of punishing the Rajputs, the practice itself was not doubtful in the realm of pure legality. Temporary *khalisa* was a stop-gap arrangement the Timurids practiced once they conquered or occupied territories pending their settlements. Such problems arose in Rajput *vatan jagir*s they occupied or in the Deccan they conquered that temporarily remained as *pai baqi* under the imperial administration until their allocation.[266] We know from Aurangzeb's time as prince that such temporary provisions were common; he had addressed a personal letter to Shah Jahan on how to allocate *jagir*s from the *pai baqi* lands in the Deccan. Hindustan remained stable as the land settlement had been completed there as early as the 1580s. How were these temporary *khalisa* made in legal terms and implemented? Aurangzeb ʿAlamgir decided to act. Nawab Iftikhar Khan, the *subadar* of Ajmer received instructions to proceed to Marwar. Iftikhar marched and took over Jodhpur; he brought it under *khalisa* administration at once.[267]

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[264] M. Athar Ali, "Causes of the Rathor Rebellion of 1679," *Proceedings of the Indian History Congress* 24 (1961): 137.

[265] G. D. Sharma, "Some Land Revenue Grants of The Time of Ajit Singh and Abhay Singh of Marwar," *Proceedings of the Indian History Congress* 31 (1969): 288–92. A few *farman*s that Aurangzeb ʿAlamgir issued to Marwar princes can be found in Bisheshwar Nath Reu, "Some Imperial Farmans Addressed to The Rulers of Jodhpur," *Proceedings of the Indian History Congress* 10 (1947): 351–2.

[266] For the conversion between *khalisa* and *pay baqi* lands and vice-versa in the Deccan, see John F. Richards, "The Hyderabad Karnatik, 1687–1707," *Modern Asian Studies* 9, no. 2 (1975): 255–6.

[267] G. D. Sharma, "Marwar War as depicted in Rajasthani Sources (1678–79 A.D.)," *Proceedings of the Indian History*

The Marwar queen, Hadi was in a bind. What could she do? She requested the Padishah to lease her own ancestral lands as *ijara*![268] That is, essentially the Marwar queen asked her confiscated *vatan jagir* converted to *khalisa* to be contracted as *ijara* without being reconverted back to *vatan jagir* in property terms since her primary concern was ensuring her stream of income rather than guaranteed claims over the land. That way, she could also convince Aurangzeb ʿAlamgir that he would earn a lump-sum payment as rent. With this proposition, Aurangzeb ʿAlamgir most importantly didn't have to give away any concessions; it was still his *khalisa*. If he gave them back to Hadi as *vatan jagir*, he would have lost the revenue. Moreover, as they were Marwar's own territories, leasing them meant the Rajputs could certainly manage the revenue administration much better given that local officials, *zamindar*s, and peasants were their acquaintances. From the *ijara* contracts of *khalisa* lands, Aurangzeb ʿAlamgir could receive a share of revenue as rent without going through the hassle of appointing imperial agents and a whole land revenue regime to collect the rents. This also eased the headache for Mughal revenue officers who would have to deal with a variety of local peasants, *zamindar*s, and chieftains whom they did not know as well. Three situations having very different economic incentives and political consequences could be generated by the stroke of the pen of law:

(a) ex-ante situation: *vatan jagir* assignment to the Rajputs with the Mughal exchequer forgoing the revenue. The Rajputs received *tamlik al-istighlal* (ownership of the usufruct). The Rajputs benefit and the Mughals keep them in service.

(b) existing situation: *khalisa* land awaiting revenue realization for the Mughal exchequer

Congress 34 (1973): 220–31.

[268] Satish Chandra, "*Hukumat-ri-Bahi* and the Rathor War," in Chandra, *Mughal Religious*, 63–72.

with the Rajputs losing their revenue. The Mughals await benefits despite land control and the Rajputs lose their benefits and land control.

(c) ex-post situation: *ijara* of *khalisa* where the Mughal exchequer receives rent and the Rajputs take the difference between the revenue they collect and the rent they pay. The Mughals keep land control and take rent whereas the Rajputs recover parts of their original revenues and lose control of land.

From the Mughal perspective, taking back the land assignment given for usufruct rights was inefficient as they had to await the accrual of revenues and establish their collection system. Instead, efficiency dictated leasing land for rent.

Until the eighteenth century, large *ijara* contracts were only used in such exceptional circumstances pending the settlement of *jagir*s and the allocation of *khalisa* and never for revenue farming purposes. Another such example can be found during Aurangzeb ʿAlamgir's conquest of Golkonda and the Karnatak.[269] Appropriating and re-appropriating lands but also ordering and giving them away were political games based on legal mechanisms. The logic of maintaining this sovereign prerogative for deciding the nature of land claims was a crucial aspect of being a Padishah. They also strongly confirm the juristic idea that the Mughal lands belonged to the *bayt al-mal* and not to the legally landless peasantry.

[269] On the *ijara* arrangements following the Golkonda conquests, see Alam and Subrahmanyam, *Writing*, 345–6.

Leasing the Cultivation of Commercial Crops

South of the Vindhyas, *ijara* lease holdings were given for the cultivation of commercial crops. Let us take interesting examples from the 1660s preserved in the Mughal documents at the Telangana State Archives to reconstruct the meticulous manner in which lease holding contracts were agreed upon and transactions negotiated even for relatively small sums of money. In Ramgir *sarkar*, the regional *divan*, Lalchand approved two *ijara* contracts. The details and the contract clauses were recorded in the *ruznamcha-yi vaqaʾiʿ* (daily news report) of Ramgir and attested by the seal of Muhammad Ibrahim Khuluj on 1 jumada al-thani julus 4/1072 AH (January 16, 1662). The first contract concerned Gotmal, a *baqqal* (grain-merchant) who submitted a *muchalka* (bond) for the lease holding of betel leaf cultivation at 15 *hun*s per annum (the term, *tanbul* derived from the Indic *tambula* as well as *pan* were current in Persian usage). Gotmal submitted a bond as he had already contracted an *ijara* agreement in the previous year, 1661; he was merely renewing the contract. The bond included an explicit clause mentioning the valuation of the rent at 3 *hun*s in *asl* and 12 *hun*s in *izafa*. The contractually fixed rent was calculated based on two factors:

(a) the current price of betel leaf

(b) total possible produce on the land, which itself was an estimate dependent on the average produce of the previous years

The value of the lease holding, as the document explicitly mentions, was adjustable in the future in case the retail price varied from the current price of betel leaf. This provision avoided either the lessor (Mughal chancery) or the lessee (Gotmal) incurring a loss due to adverse price

fluctuations.[270] This was in accordance with Islamic contractual law that prohibits contracts that included uncertainty, risk, or hazard (*gharar*) and also gave guarantees against *force majeure* such as natural calamities.[271] The contract could be annulled for breach of contract or warranty.

A day later, Vira Padma Reddy and Govind Patvari from Mopuram met the *divan*, Lalchand and executed a "deed of acceptance" (*qabuliyat*) for the finalization of their *ijara* contract (*nazd-i Laʿlchand divan amada dar ijara girafta va qabuliyat nuvista dadand*).[272] Indeed, the Mughal deed fits the description of tenancy contracts the Hanafi jurists had developed including the clauses to be specified for its validity:

"(a) the arable lands that are the object of the contract of tenancy,

(b) the crops that the tenant intends to grow on these lands,

(c) the duration of the contract, and

(d) the rent to be paid by the tenant."[273]

This comparison reveals that this is no mere accident on the part of Lalchand or a customary practice of unknown origin. Rather, it is the Mughal administrative translation and transmission of a legal provision of Hanafi jurisprudence. These documents do not explicitly mention a fact we can extrapolate: the implicit partnership agreement (*sharika*) between Reddy and Patvari (*Padam*

[270] "*Ruznamcha* dated 1 jumada al-thani julus 4/1072 AH (January 12, 1662)," Doc. no. IV/936, Telangana State Archives and Research Institute, Hyderabad.

[271] See Sue Rayner, "A Note on Force Majeure in Islamic Law," *Arab Law Quarterly* 6, no. 1 (1991): 86–9.

[272] "*Ruznamcha* dated 2 jumada al-thani julus 4/1072 AH (January 13, 1662)," Doc. no. IV/940, Telangana State Archives and Research Institute, Hyderabad.

[273] Johansen, *The Islamic Law*, 26.

Reddi va mukran Govind Patvari) with an equity investment. Since an *ijara* is a contract proper in Islamic legal terms unlike a *jagir* or a *madad-i maʿash* that were benefices and loans respectively, the lease holding had to be contracted between the lessor (the Mughal chancery represented by its *divan*) and the lessees rather than issued through the promulgation of a *farman* or a *hasb al-hukm*. Hence, the need for a legal instrument called *qabuliyat*.

Furthermore, an attached document called *sharh-i qabuliyat* (clarification of the deed of acceptance) from 1662 provides 70 *hun*s 9 ½ annas, the *jamaʿbandi* (annual revenue assessment) of Mopuram to calculate the rent.[274] The document adds that in case of *force majeure* such as natural calamities, the lessees could request a reduction of rent. The rent is given in the form of an *asl* (original sum) and an *izafa* (addition) for any negative or positive deductions to the down payment made in case of differences in actual value of the betel crop realized in the future. Moreover, they contracted the lease holding for three years, the upper limit fixed in Hanafi jurisprudence. In each subsequent year, the estimated rent was increased, most likely to account for the increase in productivity. These adjustments were given as a legal provision for renegotiating the contract either due to price variations or differentials in total produce due to productivity of land, natural calamity, etc. The value of the asset could depreciate due to wear and tear; in cases where the lessee was responsible for the depreciation due to neglect, he was liable to compensate for the loss upon the termination of the *ijara* contract. For long-term capital investments, the lessor, the Mughal chancery was responsible. Therefore, the annotation (*sharh*) explained the conditions under which the deed of acceptance was made. The *ruznamcha* was copied with an extract of the *sharh* as the local scribe was sending information on Ramgir activities to his higher authorities.

[274] Doc. no. IV/940. For a template for composing a *sharh-i qabuliyat*, see Srivastava, *Siyaqnama*, 29–30.

This deed of lease holding was copied in the news report and sent to higher-up officers at the provincial level for verification and oversight. Therefore, at least three sets of the contract would have been prepared: one for the partners, the other for the *divan*, and a third extract of the contract for the news report. The lessees could request additional true copies for ensuring the safety of their documents in order to prove their claims. If conflicts arose, the three versions could be compared. It is also likely the Mughal chanceries destroyed the documents once the contracts themselves had terminated as they no longer had legal effect, and the few and far between that survive today owe more to the accidents of history. From the Mughal point of view, there was no need to stock past contracts as they had no consequence. Under Islamic law, precedence had no legal value. Templates for drafting contracts were available in *dastur al-ʿamal* and any legal discrepancies or doubtful clauses could be rectified upon the *qazi*'s advice.

Revenue Farming as Short-term Borrowing in the Eighteenth Century

The Kacchawaha Rajputs too practiced *ijara* in their *vatan jagir*. In 1727–29, several agreements (*navisht*) were composed for two types of tenancy contracts: *navisht ijara* and *navisht kiraya* in Rajasthani that Jai Singh II leased out. Local chieftains, grain merchants, and financiers stood surety and signed bonds for Jaitkipura in Salawad *pargana* close to Dausa for 1901 rupees; 1100 rupees for Jaitpura near Sambhar; Jalalpur for 4001 rupees; 151,901 rupees for *ijara* in Akbarabad *pargana*, among others.[275] On all these legal procedures, as the *vakil* reports inform us, the Mughal chancery gave broad instructions in demarcating and authorizing the *ijara* lands as the Padishah was the ultimate arbiter. Payments made through *havala* transactions against *hundi*s for

[275] Doc. nos. 1445; 1447-1448; 1454; 1468, Kapad Dwara Collection.

ijara contracts contributed to the expansion of monetary and financial circuits. The average *hasil* figures of previous years were used to estimate their values. Given the overlapping jurisdictions, it was easier for the *mansabdar*s to even contract lease holdings of their *jagir*s with others rather than manage them themselves.[276] In the Rajasthani *vakil* report we saw earlier, Pancholi Jagjivan Das also mentioned *ijara*s to Jai Singh II's *divan*, Shah Nainsukh. He was waiting to receive the *naql* (true copy) of the *qabuliyat* (deed of acceptance) and the *patta* (lease) to take physical possession of the lands.[277] Equally, the Rajputs leased the maintenance of their *purajat* to locals for a contractual salary.

In the early decades of the eighteenth century, large-scale *ijara* contracts appeared when the *umaraʾ* themselves received salaries and revenue farming rights from the *khalisa* lands. Nobody was better attuned to the imperial financial crises of the 1710s than Khafi Khan who remarked that Farrukh Siyar contracted lease holdings worth "several lakh rupees" (*lakhha*) as he was short of financial liquidity.[278] Khafi Khan's rhetorical statement need not be taken as an empirical truth since he does not provide statistical data but the tone of his language makes it amply clear: "abandoned domain lands were privatized" (*khalisa-yi muʿattal mukhass budand*) and their *pargana*s were "bought and sold" (*baiʿ u shara*). An *ijara* contract granted by Muhammad Shah in 1730 bears the seal of the *khanazad*, Saʿdullah Khan. The document with a *nagari* note mentions the land was granted for three years since Islamic law imposes a time limit be mentioned and

[276] For a general overview, see S. P. Gupta, "Ijara System in Eastern Rajasthan, 1650-1750," *Medieval India: A Miscellany* 2 (1972): 263–74; S. P. Gupta, *The Agrarian System of Eastern Rajasthan* (New Delhi: Manohar, 1986).

[277] "Rajasthani *vakil* report from Pancholi Jagjivan Das to Sawai Jai Singh II dated asvin badi 4, 1769 VS (September 8, 1712)," in Sharma, ed., *Vakil Reports*, 286.

[278] Khafi Khan, *Muntakhab al-lubab*, vol. 2, 773. See Satish Chandra, *Parties and Politics at the Mughal Court, 1707–1740* (New Delhi: Oxford University Press, 2002), 470. For the increased power of intermediaries, see Alam, *The Crisis*, 96 ff.

stipulated as per the contract. In lieu of a nominal revenue assessment worth 48,360 *dam*s, the *ijara* was contracted for 5200 rupees in Muhammad Shahi coins for the period from the *kharif* to the *rabi fasli* annual cycle.[279] By the mid-eighteenth century, even Mughal salaries were paid through *tankhva ijara* from the *khalisa* land leased out.[280] Household courtiers were accused of demanding *ijara* grants and impoverishing the Mughal State.[281] Later on, there were attempts at abolishing these practices that came to a naught.[282]

The practical financial collapse of the Mughal exchequer in the early decades of the eighteenth century was the main cause behind the recourse to large-scale *ijara*s of *khalisa* land. Though attempted occasionally, short-term borrowing from private financiers was insufficient for the financial needs of the empire. Later Mughals like Farrukh Siyar had heavy pecuniary obligations to the financiers of Murshidabad through intermediaries in Patna. Even later, Jagat Seth remitted tribute to the Padishah by drawing drafts; their convoys were seized 1712.[283] In the second and third years (1721–22) of Muhammad Shah's reign, the treasury was empty. In 1722, there was a severe shortage of money supply in northern India. In the sixth year of his reign, ten million rupees were collected from the army officers through *ijara*.[284] In 1726, the Bengal tribute was remitted in *specie* and in 1728, they were remitted in *hundi*s (bills of exchange) while *zamindar*s

[279] Doc. no. 180, Kapad Dwara Collection.

[280] Dilbagh Singh, *The State, Landlords, and Peasants: Rajasthan in the 18th Century* (New Delhi: Manohar, 1990), 134.

[281] Malik, *The Reign*, 83–4.

[282] Ibid., 416.

[283] J. H. Little, "The House of Jagatseth," *Bengal Past and Present: Journal of the Calcutta Historical Society* 20 (1920): 111–200; 22 (1921): 1–119. Also see Karen Leonard, "The 'Great Firm' Theory of the Decline of the Mughal Empire," *Comparative Studies in Society and History* 21, no. 2 (1979): 151–67.

[284] Khafi Khan, *Muntakhab al-lubab*, vol. 2, 83.

had deposited their revenues at the provincial treasury. The *hundi*s were then sent by financiers to Shahjahanabad for their encashment. In the context of these budgetary problems that arose in the 1710 and 1720s, owing in part to the several battles of succession, state finances were at their weakest.[285] There was both a shortfall of revenue (income) and lease holdings became a proxy for short-term borrowing (debt) in the absence of capital markets for contracting long-term public debt. Until then, the Mughal household neither borrowed nor give away lease holdings for purely financial purposes of balancing the imperial treasury accounts.

The Padishahs too had become dependent on private financiers, an event that would have been unheard of, except under exceptional circumstances of short-term cash shortages, during the rule of the "Great Mughals." What could be done under the "financial weakness" of the imperial household itself in this nexus between the state, officers, and private financiers? The point of these financial crises of the early eighteenth century have been read back to the seventeenth century. The rationale behind the increased growth from *ijara* contracts from the late seventeenth to the early eighteenth century is many that cannot be reduced to a generic notion of "revenue farming." Lease holdings were particularly suited for lucrative commercial crop cultivation like indigo and betel since taxation incentivized food grain production. Financiers and traders were co-opted into contracting these leases as they could also commercialize the trade in commodities like indigo, the raw material for textile dyeing. These created interlinkages between the various stages of textile production and trade. Lease holding offered economic incentives to the lessor and the lessee. Disaggregating the Mughal *ijara* practices in the light of Hanafi law, we see that a variety of reasons informed these choices: the strength of Mughal hold, temporary cultivation of newly

[285] Zahiruddin Malik, "Financial Problems of the Mughal Government during Farrukh Siyar's Reign," *Indian Economic & Social History Review* 4, no. 3 (1967): 265–75. Also see Chandra, *Parties*, 80–5.

acquired lands, commercial incentives, the power of regional satraps and merchant networks as much as imbalances in the state exchequer that could be filled with down payments of rents at the beginning of the tax year rather than wait for the end of the crop cycle to realize the taxes upon the sale of the harvest. The legal logic of *khalisa* (domain) rendered *ijara* a stop-gap financial solution to cover deficits, which was not the original logic behind lease holding in Islamic law. Unlike colonial *zamindari*, legally speaking (*sharʿan* as the *ʿulamaʾ* would say), lease holding did not under any circumstances create allodial property rights. In legal doctrine and practice, *ijara* were contracted for a stipulated maximum period of three years, which was precisely thought out by the Muslim jurists to avoid creating such a basis through continuous customary tilling of land. *Ijara* as a response to the financial crisis of the 1720s and 1730s was therefore different from *ijara* as a lease holding facilitating the production of cash crops such as betel and indigo in the 1660s as well as the temporary lease holding of *vatan jagir* (ancestral fief) taken over as *khalisa* (domain). Until the 1720s, *ijara* was not used as a legal means for revenue farming.[286] Their diverse uses do not lend themselves necessarily to the argument of Mughal decline. It would not be an exaggeration to add that the Mughals had a meticulous way of running administration organized around the normative principles of Islamic law; the theoretical conception they held and the fashion in which they applied it have to be unearthed rather than assume that lease holding created allodial rights. Lease holdings continued even in the late eighteenth century under colonial rule in Bengal, Bihar, and Awadh until the Permanent Settlement was enacted in 1793. Indeed, "refractory *zamindari*"—Mughal historians have often used this term for *zamindar*s who ran their writ in northern India, originates in colonial correspondence of the late eighteenth century regarding *zamindar*s who

[286] Irfan Habib has pointed to the "official disapproval" of *ijara* in the second half of the seventeenth century. See Habib, *The Agrarian*, 275.

failed to renew *ijara* contracts.[287] These attitudes reiterated by the British in their accounts of eighteenth-century property rights in the Indo-Gangetic plains need further investigation.

Practices and Conceptual Problems of Lease

The Mughal chancery, however, did not transmit the technical legal analysis found in Hanafi jurisprudence to the local *divan*s like Lalchand. They sent more practicable basic rules of do's and don'ts as well as the procedures of making contracts in order to respect Hanafi law in letter and spirit. Since certain family and caste groups were active in such administrative jobs over successive generations, even professional *jati*s like *kayastha*s who were *munshi*s and *karkun*s knew the Hanafi rules of *ijara* without ever being aware of the scholarly debates found in Sarakhsi, Marghinani, or Shaikh Nizam. The Rajputs too would have received instructions on how to make contracts. The conditions of Hanafi law were operative not because of the religious identity of these officers and administrators. Instead, the Mughal chancery, which negotiated such contracts, sent imperial promulgations (*zavabit*) to local agents who knew basic concepts that fit the technical discussion within the *fatawa*. As these examples illustrate, *ijara* was legally and economically (in Hanafi jurisprudence as practiced by the Mughals), lease holding resulting in rent and not necessarily revenue farming. The Mughals were not farming out tax-collection rights to the highest bidder as the Ottomans did. The Mughals leased out the land for the cultivation of cash crops in return for a fixed (revaluable) prepaid sum of money rent. Even in the Mopuram case, the *izafa* allowed for the renegotiation of the contract for any differences in future income streams. A bad crop could

[287] *Calendar of Persian Correspondence: Being Letters which passed between Some of the Company's Servants and Indian Rulers and Notables*, vol. 6 (Delhi: Manager of Publications, 1938), 50. For several cases of leases, see Ibid., 55–6; 247; 262.

cause loss to the Mughal exchequer; yet, as the contracting party, the Mughals were respecting and adhering to the rules of Islamic contractual law.

In terms of contemporary economic theory, do we consider them fixed rents or shares of produce? From the betel example, we have shown that the terms of the lease holding contract could be readjusted depending on price or income fluctuations. A problem still persists on the nature of the rent. This fixed (revaluable) prepaid sum was based on previous years' estimates of produce making it also a share of produce adjustable *ex post facto*. Since usufruct was measured in *dam*s, a fictitious unit of account, and usufruct could itself not be *mal* as per Hanafi law as it is not tangible, the rent is fixed as a pecuniary equivalent to the produce, staggered to reflect it. Therefore, the Mughal rent was not Ricardian ground rent assessed on the piece of land.[288] Mughal rent does not fit into any modern economic theories of rent nor European experiences of feudal and ground rent.

Even the eighteenth-century *ijara* of *khalisa* lands was different from Ottoman *iltizam* auctioned out annually, and, at times, for a lifetime. Only a systematic analysis of Mughal contracts can help us explain their economic rationale as well as consequences. In public finance terms, these are not merely revenue extraction mechanisms but contractual norms of governance and transactions between the Mughal chancery and individuals. Even the philological precision of using Islamic legal terms in a single extract of a document from the news reports can reveal the

[288] Theoretical analysis based on empirical data and accounting procedures could reveal a general model for understanding rent within Mughal political economy as much as the manner in which Hanafi rent laws could be reasoned and applied.

legal complexities involved in perpetuating the Mughal political regime constructed brick by brick on the foundation of Hanafi rules of property and contractual obligations.

In Hanafi law, usufruct (*manfaʿa*) has a large connotation, which includes the use of labor and services. Hence, labor recruitment was considered a lease contract where the person's labor was hired in return for a rent, *ujr*/*kiraʾ*. In a premodern agrarian society that lacked a generalized demand for labor, wages did not exist as a separate remuneration for the "factor of production," labor. The cash salaries paid to lower-level bureaucracies, artisans in *karkhana*s, military troops as well as *firangi banduqchi*s (musketeers) were all *ijara* contracts where the rent paid for hiring their services (as a factor payment, wage for us) was a remuneration for the benefit of their usufruct (as a factor of production, labor for us). One sector where it had enormous impact was the Mughal military machine that increasingly recruited *banduqchis* in the Deccan.

While a full-fledged study of Mughal military labor recruitment contracts is beyond the scope of our study, we may add that they were paid what the jurists called the "contractually-fixed rent." However, this wage rate could be renegotiated upwards if it was lower than what the jurists called "fair rent" (in case of inflation or overtime work). When Aurangzeb ʿAlamgir stayed in Kashmir for a few months, he paid a salary increase to the local employees as the Mughal retinue's presence forced them to work overtime. He was paying a "fair rent" to compensate the overtime labor that was not covered in the "contractually-fixed rent" for labor hire. Such contractualism that had been the *modus operandi* of the Mughal State.

While the effects of *ijara* on large tracts of agrarian lands have been studied for the eighteenth century,[289] in Islamic legal terms, it was a lease holding contract little to do with European or Ottoman tax-farming. The *ijara* contract did not give rights to farm revenues due to the state to individuals for a lumpsum payment but to lease the land for cultivation to different agrarian communities. The Mughals never practiced Ottoman-style *mukataa-iltizam*, which was tax-farming proper where the right to collect land and urban taxes were auctioned to the highest bidder (Turkish, *mültazim*/Arabo-Persian, *multazim*) on an annual basis.[290] The Ottoman practice was closer to the French *Ancien régime*'s *fermes générales* and identical in purpose, namely, the auction of tax collection rights.[291] The Mughals never auctioned *ijara*s. Moreover, Ottoman *mukataa* and *malikane* were life-long tenures of tax farming.[292] However, the Mughal *malikana*,

[289] See Alam, *The Crisis*, 39–42; André Wink, "Maratha Revenue Farming," *Modern Asian Studies* 17, no. 4 (1983): 591–628; Sudev Sheth, "Revenue Farming Reconsidered: Tenurial Rights and Tenurial Duties in Early Modern India, ca. 1556-1818," *Journal of the Economic and Social History of the Orient* 61, nos. 5-6 (2018): 878–919. Also see Bayly, *Rulers*, 164–70 for a brief survey of expansion in "revenue farming" in the second half of the eighteenth century. For Rajasthan, see S. P. Gupta, "The Jagir System during the Evolution of Jaipur State (c. 1650-1750)," *Proceedings of the Indian History Congress* 35 (1974): 171–9; Singh, *The State*, 129–43; Suraj Bhan Bhardwaj, "Conflict over Social Surplus: Challenges of Ijara (Revenue Farming) in Eighteenth-Century North India: A Case Study of Mewat," in *Revisiting the History of Medieval Rajasthan: Essays for Professor Dilbagh Singh*, eds. Suraj Bhan Bhardwaj, Rameshwar Prasad Bahuguna, and Mayank Kumar (New Delhi: Primus, 2017), 52–83*;* Mamta, "Petty Moneylending to Ijaradari: Multiple Facets of Indigenous Banking of Rajasthan during Seventeenth and Eighteenth Centuries," in *Revisiting,* eds. Suraj Bhan Bhardwaj et al., 197–239.

[290] Halil Inalcık, "Military and Fiscal Transformation in the Ottoman Empire, 1600-1700," *Archivum Ottomanicum* 6 (1980): 283–337. For the theory of tax farming in Islamic law, see Khaled Abou El Fadl, "Tax Farming in Islamic Law (*qibālah* and *ḍamān* of *kharāj*): A Search for a Concept," *Islamic Studies* 31, no. 1 (1992): 5–32. Especially, refer to Ibid., 24 ff for the shift to *iltizam* in Ottoman Egypt. For an analysis of Ottoman *iltizam*, see Linda Darling, *Revenue-Raising and Legitimacy: Tax Collection and Finance Administration in the Ottoman Empire, 1550-1660* (Leiden: Brill, 1996), 119 – 60.

[291] For the French context, see Yves Durand, *Les fermiers généraux au XVIIIe siècle* (Paris: Presses Universitaires de France, 1971). For a comparative analysis, see Eliana Balla and Noel D. Johnson, "Fiscal Crisis and Institutional Change in the Ottoman Empire and France," *Journal of Economic History* 69, no. 3 (2009): 809–45.

[292] Şevket Pamuk, *A Monetary History of the Ottoman Empire* (Cambridge: Cambridge University Press, 2000), 190–2. The Ottomans used *ijara* far less, and, certainly not for short-term borrowing. See Sabrina Joseph, *Islamic Law on Peasant Usufruct in Ottoman Syria: 17th to Early 19th Century* (Leiden: Brill, 2012), 66–77 for the distinct functions of Ottoman *ijara*.

despite its etymological similarity, was the *zamindar*'s customary claim for compensation from the land revenue fixed at varying rates.

Mughal *ijara*s were often sub-contracted further down the hierarchy.[293] The eleventh century Transoxanian Hanafi jurist, Sarakhsi had endorsed this principle of sub-contracting.[294] Indeed, according to Hanafi jurists, the sub-contractor could charge a higher rent than the rent he paid to the Mughals since they were two independent contracts. In the large scale *ijara*s that appear in the eighteenth century, this led to lower-level intermediaries benefiting at the expense of the Mughal chancery. Since it was entirely legal, the Mughals had no problem with this practice. In this way, the large tracts of lands that the Mughals leased for a lump-sum payment created multiple ripple effects as the lessees parceled out these tenures and sub-contracted them further down the social hierarchy, especially, to *zamindar*s, peasants, *mahajan*s, and *baqqal*s who stood surety for actual cultivation. Mughal short-term borrowing through *ijara* had wider economic and financial implications for the precolonial economy. Intermediate rentiers benefited, a story that has often been portrayed as an era of regionalization, decentralization, and commercialization in the eighteenth century. Rentierism may very well have created obstacles in terms of productivity of the agrarian economy and skewed income distribution. Equally, given layers of sectional interests of rentierism and possibilities of market failures like the free-rider problem, *ijara* could have hampered long-term investments in land infrastructure that had been the hallmark of the long Mughal seventeenth century (1580s–1720s).

[293] Habib, *The Agrarian*, 274.

[294] For the legal theory on *ijara*, see Johansen, *Islamic Law*, 27 ff; Brunschvig, "Propriétaire," 9 ff.

For the modern historian, the legal foundations of these operations are murky waters while the Padishah and his court knew crystal clear what they were doing since they were immersed in that culture of legal governance. This in one reason why Aurangzeb ʿAlamgir's prudence prevented him from employing *ijara* as a short-term borrowing solution as that could have long-term unintended consequences from the imperial budgetary perspective. Moreland had hit the nail on its head: "in later periods *ijāra* denotes an intermediate speculative tenure, the holder of which hoped to make money out of the cultivators to whom he gave possession, but I am doubtful whether this rendering is applicable to the middle of the seventeenth century."[295] Legally, *ijara* always meant a lease holding agreement but its use could have the consequences of a "speculative tenure" as it turned out from the 1720s onwards: slicing and parceling out of lands went through several intermediate stages of rentiers and lessees, who in turn leased out. Indeed, a *mansabdar* took a *pargana* on lease and leased out groups of village lands to intermediary groups who further leased those lands, and even lent money for production costs down to the actual cultivators. That was no sound way to manage Mughal imperial finances. Filling short-term revenue shortages by allowing the intermediary groups take advantage of speculative tenures was a threat to the very survival of the Timurid State as its own domains would be privatized. Indeed, financial imprudence in the first half of the eighteenth century ended up unraveling the Mughal State.

Ijara was not a customary practice that emerged out of nowhere, but a legal provision extensively developed by Hanafi jurists since Sarakhsi in eleventh century Transoxania. We still lack a comparative analysis of Rajput, Maratha, and even early colonial British *ijara*s, all of which were products of legal acculturation to *ijara* rules of the Hanafi school the Timurids had cultivated.

[295] W. H. Moreland, "The Development of the Land-Revenue System of the Mogul Empire," *The Journal of the Royal Asiatic Society of Great Britain and Ireland* 1 (1922): 32.

As late as 1859, the Rajputs subcontracted the rights to levy taxes on the boats arriving at Banaras's Manmandir Ghat for one year at 10 rupees per annum.[296] They also leased the banks of the Manmandir Ghat for a year to Sadal *ahir* and Ramjivan *teli* for setting up shops. Similarly, the British too subcontracted boat rights on the Hugli and the Baliyaghata canal in Calcutta in the 1810s.[297] Though, unlike the Mughals, they introduced competitive bidding to increase revenues. The subcontractors who paid higher rents would be most likely forced to extract higher ticket prices from passengers.

As we have shown, a wholesome appreciation of the legal aspect of Mughal practices goes a far way in erroneously not clubbing *ijara* under a generic rubric of "tax farming." *Ijara* was lease holding and not tax farming; hence its legal rationale and purpose as much as economic consequences were different for the lessor and the lessees. The range of possible uses for *ijara*: lease holding in commercial crop cultivation, *purajat* management, sub-contracting of the postal system, short-term borrowing on collateral, should lead us to develop a general theory of Mughal lease holding as per Hanafi law.

[296] Doc. no. 418, Kapad Dwara Collection.

[297] Anisuzzaman, ed., *Factory Correspondence and other Bengali documents in the India Office Library and Records* (London: India Office Library and Records, 1981), 230–1.

Chapter 5

The Mughal Theory of Value, Money, and Price:

Political Economy and Managing the Monetary Sphere

"[V]iews on money are as difficult to describe as are shifting clouds."[298]

In the historical analysis of the Mughal monetary system, Fisher's Quantity Theory of Money has dominated discussions though there has been little consensus as MV = PT represents an identity equation and hardly explains causality (M being money stock and P standing for price).[299] When QTM is taken as a causal relation, assuming the velocity of circulation (V) and the transaction demand (T) remain constant, any change in money supply (ΔM) can only explain inflationary or deflationary consequences (ΔP) in the short run or the "price revolution" in the long run. Often, partisans of the QTM like Irfan Habib have been interested in the long run to the detriment of the short and medium run fiscal and monetary difficulties that the Mughal State faced at any given instance of time. Sanjay Subrahmanyam has criticized this approach to the QTM pointing out that no satisfactory explanation has been offered for why we may assume that V and T were constant throughout the Mughal economy in spatial and temporal terms.[300] Nevertheless,

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[298] Joseph A. Schumpeter, *History of Economic Analysis* (London: Routledge, 2006), 276.

[299] See Irfan Habib, "The Currency System of the Mughal Empire, 1556-1707," *Medieval India Quarterly* 4, nos. 1-2 (1960): 1–21; John F. Richards, ed., *Imperial Monetary Systems in Early Modern India* (Delhi: Oxford University Press, 1987); Najaf Haider, "Precious Metal Flows and Currency Circulation in the Mughal Empire," *Journal of the Economic and Social History of the Orient* 39, no. 3 (1996): 298–364; Najaf Haider, "The Quantity Theory and Mughal Monetary History," *Medieval History Journal* 2, no. 2 (1999): 310–48. On the private credit system in premodern South Asia, see Sanjay Subrahmanyam, "Introduction," in *Money and the Market in India, 1100-1700*, ed. Sanjay Subrahmanyam (New Delhi: Oxford University Press, 1994), 1–56.

[300] Sanjay Subrahmanyam, "Precious Metal Flows and Prices in Western and Southern Asia, 1500–1750: Some

Habib sticks to his position and maintains that there was forty percent increase in the price level over the seventeenth century. His analysis remains inconclusive on the "price revolution" in South Asia compared to the three-fold increase in European prices.

South Asia had a secular balance of payments surplus and little bullion output. Since the increase in money supply (ΔM) came largely from an export surplus, the QTM reflects the consequences of exogenous shocks, if they had been absorbed entirely by price rise. Money, though, functions not only as a medium of circulation; money is also an asset (especially, commodity-money) that was held as household savings by private agents and, especially, the Mughal imperial household in the *bayt al-mal* as its state endowment fund. As a store of value, money was also held for serving the needs of future transaction demand. The QTM says nothing about money demand and endogenous factors determining money demand since its focus is entirely on money supply. Money demand is determined by endogenous factors for holding money as a portfolio of assets due to the lack of a coincidence of wants and the need to spread cash balances across intertemporal cycles of incomes and payments. Unlike modern central banks that can regulate the money stock available within the domestic economy, the Mughal State could not control money stock dependent on bullion flows from abroad (unless Aurangzeb ʿAlamgir imposed an export embargo, which he did for food grains as part of famine policy, but not otherwise). Therefore, beyond minting money, what were the Mughal State's monetary, financial, and credit mechanisms? This requires us to take into account available disaggregated evidence as a series, key parameters used for decision-making, and various Hanafi financial instruments rather

Comparative and Conjunctural Aspects," *Studies in History* 7, no. 1 (1991): 104–5. For Habib's comment, see Habib, *The Agrarian*, 448. On some conjectural possibilities for assuming fluctuations in V and T within the Mughal Empire, see Om Prakash, "Precious Metal Flows, Coinage and Price in India," in *Money, Coins, and Commerce: Essays in the Monetary History of Asia and Europe (From Antiquity to Modern Times)*, ed. Eddy H.G. Van Cauwenberghe (Leuven: Leuven University Press, 1991), 71–2.

than analyze aggregates of imperial treasury deposits that has been the common trend in Mughal monetary analysis.[301]

Abandoning Fisher's QTM, which has generated more heat than light on early modern monetary phenomena,[302] we wish to arrive at what the Mughals thought money, price, and credit were, which determined their idea of value and valuation as much as financial prudence and economic rationality. The Mughal practical approach was a product of their worldly experience and thought processes that are essential for a contextualist reading of Mughal State policy and interests. In retrospect, historians might study long-term consequences on price level but for agents situated within the Mughal world, their actions, at any time instance, were guided by short and medium run concerns. In John Maynard Keynes's words, "in the long run we are all dead." Therefore, the Mughal problem was to ensure that the values of *huquq*, contracts, money, and taxes remained stable in the short run, mostly, within and between fiscal years in question when various inter-temporal adjustments had to be made between revenues and expenditures. Crucially, sufficient cash-balances were necessary to avoid sovereign default, which could ruin trust in the Mughal State.

[301] See John F. Richards, "Mughal State Finance and the Premodern World Economy," *Comparative Studies in Society and History* 23, no. 2 (1981): 285–308.

[302] For a critique of the application of QTM in historical analysis from the standpoint of the history of economic thought, see Dennis O. Flynn, "Use and Misuse of the Quantity Theory of Money in Early Modern Historiography," in *Munzpragung, Geldumlauf und Wechselkurse/Mintage, Monetary Circulation and Exchange Rates*, eds., F. Irsigler and E. H.G. Van Cauwenberghe. Akten der C7-Section des 8th International Economic History Congress Budapest 1982. Trierer Historische Forchungen, Bd. 7 (Trier: Verlag Trier Historische Forschungen, 1984), 383–417.

A Model for the Mughal State System of Payments

To find a satisfactory model of explanation, let alone solving the question of money in the Mughal context, we have to begin with Hanafi legal political economy. In the present chapter and the next, I develop various elements of a model for the Mughal State "system of payments" taking into account the following set of problems that require our attention:

(1) A general model for the creation of "state money" in a commodity-money world with free inflow of money stock from external sources

(2) An equation for money demand when money supply is determined exogenously. I take it to be the cash-balances approach with the Cambridge equation $M^d = k \cdot P \cdot Y$ where M^d is money demand, k is the portion of nominal income, $P \cdot Y$

(3) A full-fledged account of the concepts of value, money, and price in Hanafi legal political economy, which determined Mughal thinking

(4) A model for a system of payments, contracts, and settlement of debts established by the Mughal State, especially, for its pay offices, revenues, and financial operations

(5) Actual Mughal behavior as displayed in accounting methods, valuation estimates, and state policy of maintaining data for providing incentives for economic activities

When these five elements exist, we have a provisionary model that can be used to explain Mughal fiscal and monetary policy, which can be checked for its functioning in minute day-to-day operations in the extensive trail of surviving documentation. The Mughal imperial court collected information from the empire's towns and provinces on commodity prices, bullion prices, trade routes, commercial crop production, export and import of primary commodities and textiles, and, most crucially, bullion inflows at seaports to know the regular increase in money supply entering

the imperial political economy. Data collection was meticulous in its details since the Mughal State had to ascertain purchasing power, mercantile circuits, and financial incentives. Indeed, Aurangzeb ʿAlamgir had extensive knowledge, not only of the political affairs across his empire, but even trade routes, seasonal fluctuations, drought and famine conditions, price schedules, and Mughal treasury balances in every city, town, and fort. While the *suba* jurisdictional headquarters managed the disaggregated data, they were collected and independently verified in dispatches to the peripatetic imperial court—an imperial center most often stationed in the wilderness, which scrutinized them with piercing eyes. On every morning, any piece of information needed for decision-making at the *anjuman-i khass-i ghusalkhana* was made available to Aurangzeb ʿAlamgir. If not available, he would direct the relevant department to collect the information before arriving at any decision, for prudence (*tadbir*),[303] reason (*ʿaql*), and wisdom (*hikma*) were the name of Timurid sovereignty.[304]

The imperial court was the nodal agency to which information flowed and from which redacted information was shared with subordinates in the form of letters, orders, and injunctions for coordinating their activities and avoiding temporal mismatches in transactions. Time was precious, and information even more, for coordinating timely imperial economic policy. This imperial court functioned not only to strict protocol, but the Padishah also had officers, household staff, chancery officials, princes, and jurists whose counsel, advice, and opinion were sought on a

[303] While *tadbir* is generally rendered as management or governance, *tadbir* also encompasses prudence and skill required for managing *siyasa*.

[304] On crucial matters, the Padishah got reports reaching him verified independently by appointing a courtier to investigate the matter first. On certain days, the Padishah could not hold the privy council discussions due to health issues or insomnia. One morning, he suffered from toothache (*dard-i dandan*) and eye pain, which meant the meeting had to be cancelled. "*Vaqiʿa* dated 10 rajab julus 24/1092 AH (July 16, 1681)," Doc. no. 177, *Akhbarat-i darbar-i muʿalla*, Bundle no. 8, Rajasthan State Archives, Bikaner. Another night, he kept waking throughout the night due to insomnia and the privy council was cancelled at the last moment.

wide array of matters. The ultimate responsibility to take decisions fell on his shoulders. As the extensive trail of privy council minutes (*akhbarat*) and correspondence reveal, the Padishah always sought opinions from multiple sources to confirm the information he had—a fact occulted by imperial chronicles that hyperbolically situate the Timurid Padishahs at the center of narrating state power.

These issues remain understudied for three reasons. First, Mughal documentary sources are not of much help for analytical purposes unless we are open to the economic logic that Hanafi law dictated. Documents and contracts include a wide range of Hanafi clauses, conditions, and unsaid assumptions of economic thought that were self-evident to the Mughals but remain obscure for us. For instance, credit and loans given were not reckoned as assets; somebody else's *dayn* (obligation/claim) could not be accounted as one's own *ʿayn* (substance). In Hanafi *mentalité* that was illogical and absurd while for us it is second nature to include credit on the assets side of the balance sheet. For Hanafis, a *qard* (loan) A gives to B is B's *dayn* (debt). The creditor, A is the person to whom the obligation is due (*lahu dayn*) and the debtor, B is the one liable for the obligation (*ʿalayhi dayn*). Since A has to wait for the recovery of the money lent and does not possess the money during the duration of the loan, A cannot assume the debt to be automatically recoverable at a future date and, hence include it in his assets. If the Mughals wrote off a loan in case of non-recovery for any reason, a *sulh* (settlement) contract was concluded with the debtor, even for the smallest amounts possible.

Second, accounting techniques classified calculations in a manner entirely alien to us. Mughal balance sheets did not contain assets and liabilities nor debit and credit sides but were distributed under *hashv* (quantity), *irad* (validation), and *bariz* (sum total) in single-entry

bookkeeping discussed in *usul al-siyaq* (principles of bookkeeping).[305] The *irad*, literally meaning bring proof, is the left-hand side entry that gives the reason for the expenditure or the income on the right hand, *hashv*. The *hashv* further involves both deductions called *minha'i* (literally subtraction, sometimes known as *hashv-minha*) and additions called *zava'id*. The net balance arrived at is the *bariz* (sum total).

How is the balance depicted in the *bariz* carried forward to the next accounting cycle? Where all did an entry appear in different account books and ledgers? For example, a *mutalaba* loan advanced to a *mansabdar* appeared in his pay slip (*qabz al-vasul*) as a deduction to his gross estimated salary (*talab*) issued at the time of appointment. The *mutalaba* was also entered in the *avarja* (ledger book) specially kept for this purpose by the *divan-i buyutat* (superintendent of the household) and in the list of loans recoverable in the provincial *siyaha*. A note was attached in case exceptions were made with petitions and requests of the respective *mansabdar* appended. Upon the *bakhshi*'s (paymaster) finalization of the pay slip, the *tahvildar* (bursar) released funds once all accounts had been verified and adjusted; the *khazanchi* (treasurer) made the actual payments. Double entry bookkeeping always balances due to fictitious entries; Mughal single-entry bookkeeping never balanced as no fictitious entries could be made. Accounts balanced when no difference existed between the *hashv* and the *irad*, which was hardly the case as an accounting record is a snapshot of a temporal process of recurring incomes and expenditures due at different

[305] The *bariz* reflected the sum total as the balances. But then, how were balances carried over to the next accounting period? *Siyaq* does not answer that question as it reflects the actual act of accounting whereas *usul al-siyaq* defines these terms and procedures. In Mughal documents, we see the practice for which a theory always existed. That is true for law (*fiqh*) as much as accounting (*siyaq*). Any manual like Srivastava's *Siyaqnama* makes operative assumptions in preparing a document or settling accounts as we would today in making double-entry bookkeeping. Those operative assumptions require a deconstruction and a historical appreciation in terms comprehensible to us.

payment cycles, which had to be adjusted for cash-balances available to make payments when they became due.

Third, historiographical perceptions of precolonial states as military-fiscal mechanisms have meant that the Mughal State has never received a full-fledged consideration *as* a state form in all its manifestations. Even today, Central governments—be they in federal or unitary states, are responsible for collecting statistics and releasing it for public information. The Mughal State too collected data of a kind and a manner it saw fit, including Balance of Payments guarded as a state secret. Data was not released for public notice as the Mughal State needed no public legitimation in an era preceding the politics of representation and identity in the subcontinent's history.[306]

Elements of Hanafi Legal Political Economy

The Mughal theory of value, if we may call it so, was an interconnected network of five intrinsic concepts of money, price, money of account, deposits, and credit. The money of account was the sole aspect of money that was created by the Muslim State's fiat: the *imam*'s prerogative to issue a coin (ʿAlamgiri silver rupee) of definite finesse and weight and fix its nominal exchange rate with coin in another metal (copper *dam*). All these principles are explained, discussed, and elaborated independently by Hanafi jurists to be consistent with the *shariʿa*:

[306] Keeping public finances as a state secret was true for other contemporary states like the French *Ancien Régime* until Louis XVI's Finance Minister, Jacques Necker took the unprecedented step of averting the French public of their disastrous state in *Compte rendu au roi* published in 1781. In the Mughal context too, most of the *jamaʿ* and the *kharch* statistics we possess today come from lower levels of the Mughal administration with whom redacted information of a particular kind was shared. States operate with different notions and registers of secrecy. The nature of state secrets in the Mughal context has not been studied so far.

(1) *sarf* (money exchange): trade in bullion and specie in a commodity-money world, legally representing a transaction of "an obligation against an obligation" (*dayn bi-dayn*)

(2) ʿAlamgiri rupee with fixed silver content: both the money of account in which all contracts were denominated and standard of payment during the reign and the real coin whose exchange rate to the copper *dam* was fixed by *zabita* (regulation) from time to time; therefrom its exchange rate to other coins floated in the markets based on supply and demand

(3) Money price: schedule of prices of basic commodities (*mal*) and precious metals and other circulating coins (*sarf*) compared to the *numéraire* or money's money, which was the rupee current during the reign

(4) concepts of deposits and sureties: *kafala* (guarantee), *daman* (financial surety), and *wadiʿa* (deposits), *rahn* (pawn)

(5) concepts of credit operations, acknowledgment of debts, and settlement for money proper for the discharge of debts: *hawala*, *suftaja*, *dastgardan*, *musaʿadat*, and *mutalaba*

Since political economy did not exist as an independent discourse, the responsibility fell on the jurists to explain economic concepts, incentive structures, and contractual relations in *fatawa*. In *usul al-fiqh* (legal theory), they deliberated on the definition, meaning, and signification of juridico-economic terms such as *qima* and *thaman* (interchangeably meaning exchange value and price), *naqd* and *fulus* (specie, currency, or cash), *sarf* (exchange between metals and their conversion, closer to the French term, *change*), *mal* (good as strictly *res in commercio*), *ujr* (land rent), *kiraʾ* (other types of rent for the lease of usufruct including wages), *ijara* (lease), *qard* (debt),

hawala (exchange of obligations), *rahn* (pawn), *kafala* (guarantee), *daman* (financial surety or liability), *amana* (trust), *wadiʿa* (deposits), *riba* (usury) among a long list of practical terms. All these terms appear in different kinds of contracts generated incessantly throughout Mughal rule, sometimes combined in extremely complex ways to manage Mughal fiscal institutions, system of payments, and financial circumstances.

The *ʿulamaʾ* further explained these practical realities based on rarefied concepts peculiar to Islamic theological and philosophical praxis: *ʿayn* (substance) and *dayn* (obligation) for which no equivalents can be readily found in other cultures. These economic concepts had legal rules, conditions (*shurut*), prohibitions, exemptions, exceptions and norms for combining different contractual elements. Their interrelationship and the ways in which they could be combined for different economic needs, contracts, and incentives are elaborated in the *FA*. The *ʿulamaʾ* keep them consistent with religio-ethical obligations and ideals of avoiding undue profiteering, cheating, and risk. They deliberate on these juridico-monetary phenomena, not under a price theory or a monetary theory but under different chapters (*kitab*) on Muslim civil obligations. The *ʿulamaʾ* were the Mughal imperial court's chief political economists and legal advisors as they had been in all Muslim polities. Hanafi legal modes of reasoning and their sophisticated economic theory are difficult to appreciate today given that they are not self-evident to map onto modern political economy. Hence, we adopt a relativist perspective to economic thought to unpack what they intend and how those mechanisms had been applied in the subcontinent's preeminent Muslim State.

Let me briefly articulate our concern from another perspective since we may be accused of taking recourse to an elitist juridical language as the basis of the lived life of law in the vast expanses of this empire. Even to this day, some of the juridico-economic concepts used in the subcontinent's regional languages are the following: rights or claims are

haqq/*hak*/*hakk*/*hakku*/*hakkulu* (*haqq*: claim); tradable commodity is *mal*/*malu* (*mal*: good with exchange value); price is *qimat*/*kimat* (*qima*: price or exchange value); cash is *naqd*/*nakad*/*nagadu*/*nakadu*/*nagada* (*naqd*: specie); transaction is *mamla*/*mamale*/*mamlat* (*muʿamala*: legal transaction); rent is *kiraya* (*kiraʾ*: rent); *ijara*/*ijera*/*ijare*/*ijarata* for hiring (*ijara*: lease); an advocate is called *vakil*, *vakilu*, *okil*, *ukil* (*wakil*: representative or agent with power of attorney); a court case is designated *dava/davo*/*dave* (*daʿwa*: law-suit); trust is *amanat*/*amanattu* (*amana*: non-fiduciary trust); such and such a person in a document is called *phalan*/*falana*/*fulana* (*fulan*: a certain person); an agreement is *ikrar*/*karar*/*kadara*/*kararu* (*iqrar*: agreement); court summons is *ittala*/*ittila*/*ettela*/*ittile* (*ittilaʿ*: summons); a promise is termed *qaul*/*kaul*/*kavulu* (*qawl*: promise); a loan is *qarz*/*karj*/*karju* (*qard*: loan); surety and bail bond are *zamanat*/*jamanata/jaminu* (*damana*: fiduciary liability of two kinds the Mughals used as *mal zamini* and *hazir zamini*).[307] Even *hawala* transactions used for illegal money laundering originates from *hawala* (transfer of debts) on which Muslim jurists imposed stringent conditions to perform licit credit transactions. This is to mention only a handful of terms and not to forget terms like *sarf* (exchange of precious metals) that have fallen out of use in our fiat-money world.[308] The subcontinent's peoples have been accustomed for centuries to using *fiqh* terms in their day-to-day parlance and routinely employ them even today. Could it be by sheer accident of history, not borne out by any acculturation to Islamic law, that variations of this juridico-economic culture of high society have long trickled down unconsciously to peasants and ordinary folk, and still preserved in regional

[307] Here, I have included vernacular forms from Urdu, Hindi, Rajasthani, Marathi, Kannada, Telugu, Tamil, and Bengali. Similar variations can be found in Gujarati, Oriya, and all other regional Indian languages.

[308] In contemporary India, despite successive efforts at the Sanskritization of regional languages through official attempts at forcing the disappearance of such Islamic legal terms underway in the postcolonial period, they continue to have currency in common parlance. One partially successful effort includes the deployment of *adhikara*, originally meaning "authority" to substitute *haqq* in the translation of the European "right."

languages? None of this is incidental: the deep penetration of *fiqh* in the lives of ordinary people and their quotidian transactions in the Indo-Islamic *longue durée* should have been a self-evident fact. Even today, many *fiqh* concepts are on the lips of everyone. It is astonishing that Indo-Islamic historiography has been able to conveniently deny this heritage found on the surface of every regional language. This heritage reflects the depth of a genealogy tied to Islamic law's past, which was not bound to the personal proclivities of any Sultan or Padishah. Islamic law was foundational to South Asian Islamicate polities, and, it had a positive role as legal systems have in generating guarantees, claims, adjudication, and safeguards to tackle financial, economic, and legal concerns that arise for individuals and communities in any society. Because, it has been the subcontinent's historical experience to understand secular life through the eyes of Islamic law, we retain this memory from the Islamicate past unknowingly and unwittingly even in our postcolonial societies.

Combining Hanafi concepts with the classical theory of commodity-money, the Keynesian theory of demand for holding money as a portfolio, and Georg Friedrich Knapp's state money, in this chapter, we explain the endogenous factors determining Mughal monetary management. In the following chapter, we will examine the other side of money: credit.

State Theory of Money: Timurid System of Payments and Public Finances

In *State Theory of Money*, the German economist, Knapp summed up his basic principle in the following terms: "the money of a State is not what is of compulsory general acceptance, but what is accepted at the public pay offices; and that the standard is not chosen for any properties of the metals."[309] He further adds, "Money is a creature of law. A theory of money must therefore

[309] Georg Friedrich Knapp, *State Theory of Money* (London: Macmillan, 1924), vii. Also see Abba P. Lerner, "Money

deal with legal history." This approach is particularly fruitful for the Timurids, who created their "system of payments" on Hanafi principles of monetary management beyond minting the coin (*sikka*). The Mughal State was the largest holder of money. Its transactions demand was primarily fueled by channeling agrarian surplus as its cash rents that went into making payments for its war expenditure, conspicuous consumption, and administration. Money in excess of the state's current expenditure was thesaurized for precautionary demand and asset demand of money, maintained irrespective of the opportunity cost of money, i.e., interest rate.

Some decades ago, Sanjay Subrahmanyam had argued for the need to integrate money demand rather than focus on QTM's exogenous money supply in Mughal monetary history.[310] The Cambridge equation $M^d = k \cdot P \cdot Y$ is handy as its cash-balances approach helps account for money demand as well as reasons for holding money. The cash-balances approach argues that agents keep a part of their income in readily available cash for transactions and the rest as wealth. The Mughal imperial household kept cash-balances under two headings: *bayt al-mal* for the purpose of thesaurization of money as an endowment and *khizana* of different jurisdictions for the government exchequer's (*sarkar*) incomes and expenditure. The state endowment had assets and no liabilities.[311] However, the *sarkar* accounts had incomes (*amadan*) and expenditures (*kharch*). The revenue estimated at the beginning of the fiscal cycle was *jamaʿ* and its realization *hasil*. The total *hasil* alongside other sources such as imposts (*abvab*), levies, export and import duties, etc. were the *sarkar*'s income. Each of these processes and calculations were different in accounting terms

as a Creature of the State," *The American Economic Review* 37, no. 2 (1947): 312–17.

[310] Subrahmanyam, "Precious Metal," 104–5.

[311] The *bayt al-mal*'s physical assets such as houses and gardens that were leased accrued rents as recurring current revenues entered into the accounts of the *sarkar-i muʿalla*.

depending on whether one is reading a document of revenue collection, an appointment order for *jagirdari*, deposits made by for *zamindari* rights, an *ijara* contract, imperial ledger books or provincial and fort treasury balances. The actual money existed in a *khizana* of the said jurisdiction, imperial, provincial, or city. In accounting terms, they were recurrent and listed in an "abstract of accounts" (*avarja*) sent to the imperial court. Expenditures included the purchase of commodities, gunpowder, weapons, payments made for wages and salaries, etc.

The *sarkar*'s accounts, when they had deficits dipped into the state endowment, or, in case of surplus, balances (*bariz*) were physically transferred to the appropriate fort as designated by Aurangzeb ʿAlamgir. The Mughal State's endowment was not invested in financial market instruments as there were none to speak of, and it was wealth held independent of the opportunity cost of money. Even if investment opportunities existed, the Mughal State could not itself violate the prohibition on unlawful gain or usury. Indeed, its accounting procedures were meticulously fine-tuned such that unlawful gain was rendered impossible in balancing, adjusting, and auditing. At every step, equivalence was made to achieve an economic logic of general equivalence without profit or loss. Hence, a passive asset of gigantic proportions of liquid wealth in coin and bullion of the subcontinent's economy had no other purpose. Withdrawn from economic circulation, this safe custody gave key leverages to depress money supply and money demand. This was the case unless it was voluntarily reversed by dishoarding in times of financial collapse or plundered by adversaries as would happen over several successive crises in the eighteenth century leaving the Mughal State bankrupt.

Three key features distinguished the Mughals from their contemporary European counterparts: financial autonomy of the state, a sizeable part of money stock withdrawn from circulation and kept as idle money, and independence from private financial markets. With the

universalization of the Westphalian model, in all modern nation-states today, the situation is diametrically opposite: financial dependence of the state, no idle money, and reliance on public debt to raise money in the financial markets.[312] Unlike the European scenario where public debt and sinking funds had gathered pace since the 1500s, even after Aurangzeb ʿAlamgir's protracted campaigns in the Deccan, on the eve of his death, the *khizana* at the Agra Fort alone contained 240 million rupees worth of bullion and specie.[313] On the contrary, the French *Ancien Régime*'s debt servicing came to as high as 60 to 70 percent of its annual royal revenues.[314]

Now, in public finance terms, we have no model to explain the Timurid behavior. All contemporary theories of public finance assume public debt to play a central role. What effect did the state endowment have on Mughal South Asia's money supply? First, real aggregate money supply in the hands of private agents and the state was always much below the actual available money stock in South Asia. Second, Aurangzeb ʿAlamgir could control money supply by regulating how much annual budgetary surplus was transferred to the endowment wealth. The Mughal State's expenditures would also determine the lion's share of aggregate money demand.

There is an inverse relation between private accumulation and public finances. Deficit financing of the state creates a private market for public debt. Private financiers park their funds in government bonds and annuities accruing long term financial investments. In turn, the state's

[312] On the forms of capital and financial markets that public finance generated in early modern Europe, see Charles P. Kindleberger, *A Financial History of Western Europe* (London: George Allen & Unwin, 1984), 158–76. For more specific studies, see P. G. M. Dickson, *The Financial Revolution in England: A Study in the Development of Public Credit, 1688-1756* (London: Macmillan, 1967); Daniel Dessert, *Argent, pouvoir, et société au Grand Siècle* (Paris: Fayard, 1984).

[313] Richards, "Mughal State Finance," 293.

[314] David D. Bien, "Les offices, les corps et le crédit d'État : l'utilisation des privilèges sous l'Ancien Régime," *Annales H.S.S.* 43, no. 2 (1988): 379–404

public finances and expenditures become market dependent. In Mughal public finances, holding a sizeable bullion portfolio was accompanied by the socialization of land. Land and financial investments—two essential modes of creating asset markets in the early modern world—were rendered impossible given that they were central forms of Mughal State assets. Land was anyway unownable and had no market, that is, it had been legally locked in place as a non-tradeable commodity (*mal ghayr mutaqawwim*). The Mughal State's financial portfolio was such that the state gave public credit to its military officers, middling revenue officials, and peasants in the form of different non-usurious but interest-bearing annuities and interest-free loans. The reason the Mughal State kept a tight grip on preventing investment opportunities was not accidental—it was Timurid public power's deep ethical commitment informed by Islamic theological and legal culture to willfully suppress excessive private accumulation. Private interests were detrimental to the collective interests of various groups like peasants, tenants, and Timurid public power itself, which designated their respective shares in the political economy—both a way of perpetuating the state's existence as well as ensuring the intentions behind its Aristotelian distributive justice were not skewed by actions of non-state actors. In the upper echelons, routine escheat of Mughal officers' properties prevented inter-generational wealth accumulation and its transfer. How much so ever the leading military officer, Shayista Khan accumulated in Bengal did not matter as all of it returned to the Mughal State when he died in 1693. Whatever one's "animal spirits," no long-term investment ventures existed in landed assets or financial assets for profit motive in the seventeenth century. Ingenious as it was, the Mughal State had *a priori* rendered illegal such a possibility in its realms by being the sole owner and trustee of all land and most financial assets. That is, nobody could match or challenge this portfolio state.

A counterpart to a lack of investment was the high money demand for revenue and expenditure flows. In the Mughal Empire's legal and economic design, mercantile capital circulated only in so far as it was *subservient to* the Mughal State "system of payments" and additionally to carry out internal private commerce.[315] On this matter, a consensus exists on both sides of the aisle dividing South Asian historiography. Irfan Habib notes, "Indian credit system seems practically to have been formed for the requirements of commerce alone. Thus, there was no provision for long-term investment."[316] Christopher Bayly and Sanjay Subrahmanyam agree from the other side that "[merchants'] political influence is said to be surprisingly small."[317]

Counterfactually speaking, assuming that in the seventeenth century, for anybody—they could be financiers, warrior households, companies, wanting to create asset markets for circulating capital, only one way existed: bring down the Mughal State and privatize its state lands by expropriating them for oneself or selling them off piece by piece as a lucrative enterprise. Privatization happened in the eighteenth century in two stages: first, as revenue farming investment opportunities in land revenue and not land as an ownable asset when Mughal fiscality was in crisis, and second, under colonial rule as private allodial property to a landed gentry (*zamindar*s in the colonial sense of the term)—a tectonic shift in northern India's agrarian relations made possible only by the unraveling of the Mughal State. Two groups lost out in the process: Timurid public power and its peasantry between whom an abstract unwritten contract (*ʿaqd*) existed. In political theoretic terms, eighteenth-century processes were a violation of this contract effected by the

[315] For the present purposes, we will not analyze how Mughal expenditure impacted non-governmental private transactions and spending.

[316] Habib, "Potentialities," 74.

[317] Bayly and Subrahmanyam, "Portfolio," 413.

breakdown of mechanisms put in place for its perpetuation. Timurid public power was sapped of its capacities and their state tenants, the peasants, became the tenants of a landed gentry that sprang up in northern India. In economic terms, agrarian land became a marketable commodity where only those with a financial wherewithal could buy, auction, or lease large tracts. Both *khud kasht* and *pai kasht* peasants who had perpetual rights to tilling state lands, be they the same plot or shifted to different plots respectively, would become landless tenants in turn.

In the context of Mughal public finances, what was the division between the money stock in the *bayt al-mal*'s state endowment and Mughal annual revenue collections? John Richards estimates average annual revenues in the late seventeenth century at around 255 million rupees or 2,854 metric tons of silver.[318] Since Agra Fort alone contained 240 million rupees equivalent to 2,686 metric tons of silver, we can assume that the overall value of the state endowment was higher than its average annual revenue. That is, more than half of the money stock within the Mughal system of payments was kept out of circulation. What happened to this money stock during the Mughal decline in the eighteenth century? How much of it, and, through what means, returned to the subcontinent's economy for private accumulation due to increasing expenditures and diminished revenues in the first half of the eighteenth century? And indeed, how much money stock left the region after Nadir Shah's sacking in 1739, thus reducing the scope for private accumulation before colonial rule?

Rather than limit to money as the medium of circulation, Mughal monetary principle was the demand to hold money as a financial portfolio in Keynesian terms. Here, the Cambridge

[318] John F. Richards, "Fiscal States in Mughal and British India," in *The Rise of Fiscal States: A Global History 1500–1914*, eds. Bartolomé Yun-Casalilla and Patrick K. O'Brien (Cambridge: Cambridge University Press, 2012), 416.

equation comes in handy in deciding the cash-balance approach; money is primarily held as a store of value for future uncertainties. This aspect is entirely absent from Fisher's QTM.

The Mughal State held cash balances across its realms in a decentralized form for honoring contracts at each jurisdiction. The relevant treasury balances anywhere were known at the imperial court through news reports. A geographical spread of commodity-money was necessary to ease transactions, honor payments, and avoid cash shortages. For legal and fiscal reasons, local revenues officials like *amin*s, *mutasaddi*s, *karori*s, *qazi*s, and other officers were paid salaries from their jurisdiction and not directly by the imperial court. Their salaries were deducted from the gross revenues of the *suba* and the rest went to the state or the *jagirdar*s. This system had two advantages. First, paying salaries from the center to all was a cumbersome process. Second, and more importantly, if they were centrally paid, they would have little incentive to take care of their work. Rather, by tying their salaries to the regional revenues, they would have reason to properly collect them.

When shortages were found, a military escort would be sent from a treasury or a revenue or tribute point of collection, to be deposited elsewhere where money was needed. Hence, the Mughal State had to also achieve a degree of portfolio of money holding at all time given its high transactions demand, spread them across the empire to avoid defaulting on payments, which would raise alarm on the state's capacity to guarantee its debts, and risk undermining the subjects' trust due to sovereign default. On July 31, 1681, when customs duties (*saʾir* and *saʾir-i jihat*) worth 400,000 rupees were collected in Sirhind in the north, in the privy council held on the way to Burhanpur in central India, Aurangzeb ʿAlamgir ordered that the money be sent to Kabul as funds were needed for expenses of the military troops stationed in the northwestern frontiers of the

empire.[319] Both spatial and temporal aspects are central. First, the imperial court had to ensure enough cash-balances were spread out in different parts. Second, given the intertemporal divergences between when revenue receipts arrived and when payments were due, mismatches had to be synchronized for payments.[320] The Mughal imperial court determined treasury deposits as it knew the macro-picture of cash balances and expenditures that arose in each and every jurisdiction. Knowing and exercising control over this macro-picture was key to monetary sovereignty.

The cash balances and public finances we have briefly highlighted form part of Mughal "system of payments," which will become clearer as we proceed. Money was a means whose end was the circularity of payments and thesaurization. Cash rents were collected by selling food grain to the merchants in rural areas, who would transport them through the *banjara* traders to cities. Rent revenue fed back into the Mughal economy as wages, salaries, consumption and other expenditures only partly. Timurid public power scooped off the rest in its vaults to ensure price stability, money demand and supply, and remain the most solvent financial household.

[319] "*Vaqiʿa* dated 25 rajab julus 24/1092 AH (July 31, 1681)," Doc. no. 198, *Akhbarat-i darbar-i muʿalla*, Bundle no. 8, Rajasthan State Archives, Bikaner.

[320] Estimating the intertemporal fluctuation in cash balances needs a careful analysis beyond the scope of our present study. This requires collating data from between half a million to a million documents that survive in archives in Hyderabad, New Delhi, and Bikaner, which can be used to produce a fairly accurate time-series data on balances and how they periodically varied depending on military, fiscal, and financial payments, receipts, and accounting calculations.

Value and Money for the Timurids

Within a commodity-money world, the Timurids understood money from both metallistic and chartalist perspectives. Hanafis see no intrinsic value (*faʾida*) in precious metals except that they serve as a means to represent prices and make deferred payments. They value precious metal as a convenient standard for money without seeing any utility akin to Aristotle's suspicion that money has no inherent worth other than its convenience. Moreover, all Muslim States were chartalist since the state coined the actual *sikka*. In this conception, *cowrie* shells and *badam*s used for very small private transactions were outside the state payment system.[321]

All discussions in classical political economy begin with the concept of value. How is value generated for the Timurids? Muslim jurists call exchange value *thaman* or *qima*, which also meant price in common parlance. Unlike English political economy, Muslim jurists do not make a distinction between exchange value and use value. For them, use is merely the intrinsic nature of anything, which is used for a purpose. Exchange value is not generated due to a thing's use value but due to a substance's existence as *mal* (good). Anything exists as substance (*ʿayn*) and becomes *mal* only when it is brought to the market (*bayʿ*). In the market, the value of *mal* is known in monetary terms, i.e., price. A substance or even usufruct has use, but use does not generate value. Value is solely exchange value as a relation or a price ratio with other commodities, reflected in a price that can be assigned to *mal*.

[321] *Cowrie* shells and *badam*s that circulated for smaller denomination were not legal tender. Under no circumstance did the Mughal State accept or trade in non-metal monies though the two money markets were interlinked in a complex way. They were outside state money, which is why not even a single paper contract can be found denominated in non-metal exchange monies. All Mughal contracts are denominated in the money of account, ʿAlamgiri rupee, and paid in the legal tender, which could be any other metallic coin.

Commodity-money is fungible (*mithliyyat*) in nature as gold could be substituted for other gold. A gold coin (*muhr*) and a gold bar belong to the same genus (*jins*) as gold. Their relation is generic in nature as one form can be converted into another form without losing anything in its substance. Money is more complicated. Literally, *naqd*/*fulus* is any token coin in circulation such as *dirham*, *dinar*, *muhr*, rupee as commodity-money. It is merely the tangible substance (*ʿayn*) of precious metal with a defined shape, finesse, grain weight, and a stamp authenticating its value. For the Muslim jurists, in its substance, coin (*naqd*) is no different from precious metal. Coins and ingots could be melted and recast into each other. Therefore, precious metal by itself is money in its elementary form.

The Timurids had no doubt accumulated enormous wealth but what is even more astonishing, Mughal documentary trail can leave behind many interesting details. Monetary value existed for everything, even princely weight (*vazn-i mubarak*). What was Prince Aurangzeb's weight on his twentieth birthday on November 17, 1637, when he appeared in front of the assembled people (*ʿamm va khass*) in Burhanpur? At the third *ghari* (7.38 AM), Aurangzeb weighed two *man-i shahjahani*s and seventeen *seer*s. The monetary equivalent of his weight came to 20 *tola*s of gold, 2000 silver rupees, and 866 copper *dam*s, which was disbursed among courtiers and ordinary subjects.[322] This trivial fact tells us much about the nature of money as a commodity (*mal*) in Hanafi law. Commodity-money (*naqd*) is made up of a combination of four qualities: fungible (*mithli*), non-fungible (*qimi*), weighable (*wazni*), and countable (*maʿdud*). In its bullion form, it is fungible and weighable. Gold and silver are weighable in *tola*s or *ratti*s. As coins, however, money is weighable, countable, and non-fungible. For accounting purposes, the details

[322] "*Siyaha-yi huzur* dated 9 rajab 1047 AH (November 17, 1637)," in Yusuf Husain Khan, ed., *Selected Documents of Shah Jahan's Reign* (Hyderabad: Daftar-I-Dīwānī, 1950), 33.

of how Aurangzeb was weighed is not only the monetary equivalent of his weight distributed. The total value of bullion spent was the price (*qima*) of Aurangzeb's weight, that is, the amount of money it cost the Mughal exchequer in the form of expenditure. We may ask why it was necessary to note what appears to be an inane display of splendor. The cost of weighing had to be recorded to show proof of Burhanpur treasury withdrawals to Shahjahanabad. For, weighing the prince was first and foremost a monetary transaction. Such weighing too was limited by imperial regulation (*zabita*) or else giving away all his weight in gold would prove too costly. 20 *tola*s of gold and 2000 silver rupees were fixed by regulation, and, if a differential persisted, cheaper copper *dam*s were added over and above.[323]

Beyond such conspicuous consumption of *sikka*, three degrees of the money form are central to the Mughal world:

(a) Money as obligation (*dayn*): money is the means to settle debts, undertake credit, and honor contracts of claims over an intertemporal horizon, i.e., a standard of deferred payments. Money is held as a portfolio to make an instant payment when the need arises; therefore, it is a social relation.

(b) Money as a price relation (*huwa min jins al-thaman*): exchange values or ratios at which different goods are exchanged against money, i.e., monetary theory is always already a price theory.

(c) Money is a legal fact determined by state fiat (*imam*'s prerogative or *zabita*) and the Hanafi legal principle of *sarf*: When the Mughal State issued the coin and regulated its

[323] In today's metal prices over 35,000 USD were spent. In Mughal purchasing power of 1637, the real value would have been many times higher.

characteristics, private agents adjusted their behavior and expectations accordingly. In turn, analyzing their behavior, the Mughal State could intervene by altering the money of account's exchange rate, debasing the coin, or increasing and decreasing available money supply.

In a commodity-money world, the value of money was of two kinds: money's value in terms of other commodities which is the inverse of the general price level and the value of precious metals determined internationally by silver and gold prices. The Mughals called these two types of values *mal* and *sarf* respectively.

Hanafi legal terms have different meanings depending on the context and cover a wide field of thinking. "Obligation or *dayn* can arise out of a contract (loan, sale, surety, transaction or marriage), or out of a tort requiring reparation."[324] As Chefik Chehata notes, *dayn* is understood as the obligation that would arise in all transactions categorized as *tijara* (commerce), which has an expansive meaning encompassing sales, purchases, leasing, rentals, and borrowing.[325] *Dayn* is literally an obligation; it could be a debt while discussing loans. When discussing monetary transactions, jurists designate commodity-money as *dayn* since money functions as an instrument to discharge of debts. Intrinsically, precious metal has *ʿayn* (substance) and exists as a *shayʾ* (thing) but it is not so in its function *as* money. Let us imagine, Aurangzeb ʿAlamgir bought a basket of mangoes on his way in summer when he stopped in Burhanpur (which he never really did as mangoes from across the empire were sent as *hiba* or gift). For him, at the time of the sale

[324] A. M. Delcambre, "Dayn," in *Encyclopaedia of Islam*, Second Edition, eds. P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs, accessed 20 June 2020, http://dx.doi.org/10.1163/1573-3912_islam_SIM_8467.

[325] Chehata, *Études*, vol. 1, 183–4.

transaction (*bayʿ*) when the mango seller gave mangoes, his money in the money bag was *dayn* (obligation) as he was at that instance in debt to pay mangoes' price (*qima*) in the equivalent value of ʿAlamgiri rupees. This was fiduciary liability (*daman*) for which he was personally responsible (*dhimma*) to discharge the debt. He discharged his debt with money understood as *dayn*, which the mango seller took and Aurangzeb ʿAlamgir owned the mangoes. Through this generalization, the *ʿulamaʾ* would say that money held is always already *dayn* even before transactions are conducted as one keeps a portfolio of money to discharge debts. That is, money is always already a store of value.

These legal definitions of money have major consequences for Mughal accounting. Commodity-money, though a substance (*ʿayn*), is explained as obligation in so far as money serves two purposes: means of payment and standard of price determination. *Sarf* (money exchange) is the trade in bullion and specie in a commodity-money world called *dayn bi-dayn*. The relative values of precious metals against each other floated in the market depending on supply and demand. The process of exchanging one type of money (or bullion) against another type is moreover designated as the "sale of price for price" (*bayʿ thaman bi-thaman*).[326] One money instrument, say the silver rupee, is exchanged against another money instrument, say the gold *muhr*—both are standards of price. The difference between the buying and the selling price of precious metals and coins is the *sarraf*'s profit.

[326] Schacht, *Introduction*, 154.

Money of Account: The *imam*'s prerogative

Money is a social relation as much as something fixed by law for purposes of accounting, taxation, and contracts. Within the complex process of state formation, striking the *sikka* and reading the *khutba* were empty symbols if they did not have currency. *Sikka* is not only issuing coin but in its essence the *imam*'s prerogative to designate the money of account—the denomination in which all contracts have to henceforth be made. As Keynes notes, "The State will, as a rule, promulgate a formula which defines the new money of account in terms of the old."[327] Timurid Padishahs coined the *sikka* in their name, which became the new money of account upon their accession. By imperial promulgation, the ʿAlamgiri rupee came into existence in 1658. It came into effect with an exchange rate fixed at 15 copper *tanka*s by *zabita*—this is literally, regulation that has to be understood in monetary contexts as state fiat. The *imam*'s prerogative is laid out in a legal opinion attributed to Abu Yusuf: "According to Abu Yusuf, the secret minting of good dirhams in places other than the [legal] mint is not recommended for anyone because it is the prerogative of the sultans."[328] Abu Yusuf makes his statement as one of ethical good to avoid the privatization of mints. When it was decided to remove the Qurʾanic verse from ʿAlamgiri coins that too was based on a legal opinion, which regarded it as inappropriate as people soiled coins.[329]

The ʿAlamgiri rupee became the money of account and money as such, though not the only one. All older coins and coins from other regions, especially, in the Deccan, remained legal tender.

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[327] John Maynard Keynes, *A Treatise on Money: The Pure Theory of Money* (London: Macmillan, 1971), 4-5.

[328] David Henry Partington, "The Nisab al-Ihtisab. An Arabic Religio-legal Text," (PhD diss., Princeton University, 1961), 255.

[329] Ibid., 195. Jurists were acutely concerned with monetary mismanagement by sultans, especially, the debasement of coins whose effects could be long-term going beyond their reigns. Ibid., 199.

By law, then all coins would float around the ʿAlamgiri rupee as new contracts were denominated in the new rupee but could always be paid in their equivalent with a discount in any commodity-money. The exchange rate between the ʿAlamgiri rupee and the copper *dam* gave the nominal rate for the continuity of debt and credit operations as well as honoring private contracts that had been determined in Shahjahani rupees until 1658. Money of account is used to denominate contracts whereas legal tender monies are used for their actual settlement.

Since the ʿAlamgiri rupee was also a real coin with a fixed silver content (in as much as it served the function of money of account), the rupee's exchange rate had to be adjusted periodically by *zabita* (regulation) to reflect the actual price ratios between silver and copper dependent on international market conditions. All accounts were nominally reckoned in the ʿAlamgiri rupee. The actual exchange rate was determined by the money market based on the exchange ratios between precious metal prices. No legal mint ratio existed due to the *shariʿa* principle that price is market determined and cannot be arbitrarily fixed by state fiat. Once the new Padishah acceded, his coin became the money of account for denominating contracts and existed in real coin with all other pre-existing coins remaining fully legal tender, but partially demonetized. Exchange ratios of all other coins floated against the ʿAlamgiri rupee based on the principle of *sarf*. Older coins were liable to a discount: *sarf-i sikka* or *batta*. *Sarf*, a legal theory developed by jurists achieved economy: the need to not entail exorbitant costs of reminting all previous coins. Since Mughal pay offices accepted other coins at a discounted rate, private agents had no incentive get them reminted until and unless they had lost substantial metal content due to wear and tear.

In the Hanafi monetary conception, all of them did not have to be converted for bullion, whether in ingots or specie were legal tender. There was no legal tender as such since Hanafis think precious metal is a *sui generis* money-commodity. Therefore, they were not all melted and

recoined. However, over and above this, like all other states, Muslim States had introduced the coin with a stamp as a mark of trust for weight, fineness of grain, and authenticity. The exchange rates between silver, copper, and gold, the three legal tenders were determined by the market and the total money stock by the existing money stock and bullion inflows subject to wear and tear. Whereas the Mughal State fixed the money of account, it kept records of money stock entering from outside by strictly enforcing its coinage at the ports whereas the existing money stock at any time remained in a variety of coins. Thus, the state could anticipate broader trends in the price ratios between metals. One way to neutralize inflationary and deflationary tendencies involved adding or removing extraordinary taxes (*abvab*). These taxes would squeeze out or release more circulating money and gradually meet expectations of price stability in the short term. Moreover, the base rate of the ʿAlamgiri rupee was fixed at 15 copper *tanka*s initially. Any deviation in the actual market exchange rate from this base rate helped state authorities verify fluctuations in the supply and demand for different metallic coins.

From the price theory angle, the Mughal approach to prices has to be considered both as prices to other circulating coins dependent on the metal content, the prevalent market price, and a discount for wear and tear and lack of premium that the ʿAlamgiri rupee enjoyed. As the spot prices of metals vary in the market, the exchange ratios fluctuate vis-à-vis each other, and a small discount could be charged as a means of charge for the activity of doing business and providing intermediation.

How did the imperial court know the money of account's spread in its realms? Through its local intermediaries and middling revenue officials, the military and the imperial elite were regularly updated on monetary matters. As an example, I take what happened in the interior of the southern regions of Shahjahanabad *suba* in the mid-1660s when the ʿAlamgiri rupee began to

circulate in the local markets. On April 10, 1665, two Rewari officials, Gopal Das and Vamshidhar sent a routine letter to Kalyan Das, the Rajput *divan* on their local affairs, revenue collections, and preparations for the *kharif* season. One of their pressing problems was a ban on Rewari and Bikaneri tobacco entering Shahjahanabad's markets. More importantly, they added that ʿAlamgiri rupees had begun to circulate (*alamagiri paisa calava ki takida chai*). Now that the money of account was available in Rewari, the local *qazi* shifted to preparing the market price list (*rojanama nirakha*, i.e., *ruznamcha-yi nirkh*) in ʿAlamgiri rupees (*kaji naurangasahi paisakau nirakha lishai chai*).[330] Until ʿAlamgiri rupees were found in the markets, the *qazi*s could not create the market prices in a fictitious money of account but in real available coins. Until April 1665, the ʿAlamgiri rupee's exchange rate to other coins and commodities was an unknown variable in Rewari as prices were still being quoted in older denominations. A few months earlier, on January 10, 1665, the village official of Khohri (between Narnaul and Kotputli), Ramji Dharma too had sent a letter to Kalyan Das submitting 7,000 rupees of land rent and also informed him in passing that ʿAlamgiri rupees were finally available in his region: "I am writing about the circulation of ʿAlamgiri paisa (*sic*: read rupees)…the *mahajan*s have confirmed it" (*alamagiri ka paisa calava ke vasate lishau thau…mahajanasau takida kari hai*).[331] All such information would be forwarded from across the empire's realms.

In the agrarian hinterland south of Delhi, it took nearly seven years for the newly minted coins to circulate. These bits of information may seem trivial for us today, but they were vital for the imperial court in ascertaining the spread of Aurangzeb ʿAlamgir's money of account. Now that

[330] "Rajasthani letter from Gopal Das and Vamshidhar to Kalyan Das dated vaisakha sudi 5, 1722 VS (April 10, 1665)," Doc. no. 134, *Amera abhilekha*, Bundle no. 3, Rajasthan State Archives, Bikaner.

[331] "Rajasthani letter from Ramji Dharma to Kalyan Das dated magha sudi 5, 1721 VS (January 10, 1665), Doc. no. 271, *Amera abhilekha*, Bundle no. 2, Rajasthan State Archives, Bikaner.

the money of account was appearing in the interior of Shahjahanabad *suba*, within a year, the imperial court sent Muhammad Saʿid, a macebearer (*gurajibaradara*) and other spies (*jasusa*) in February 1666 to the vicinities of Rewari.[332] The local traders, Gokul Das, Sandhi Kalu Ram, Shah Bishan Das, Thakur Maha Das, Shah Har Ram, Vamshidhar sent several letters on February 28, 1666, to confirm each other's opinions to Kalyan Das. Mughal agents went about verifying if the traders were passing on older coins (*purana sika ka paisa*) and were frustrating them by strictly enforcing the circulation of ʿAlamgiri rupees (*aurangasahi calau iha bata ki bahauta takida jani*). They couldn't make out "head or tail" (*mathau mundau*) of this enforcement. Vitthal Das and Vijay Ram too confirmed to Kalyan Das that in Kotla *pargana* (*sarkar* Tijara, *suba* Shahjahanabad) ʿAlamgiri rupees were available and the macebearers were enforcing their circulation.[333] Perhaps, in the hinterland, traders initially hoarded new coins given their limited availability and it required some coercion from state authorities to get them to maintain circulation in regular transactions. The imperial court knew "the head and the tail" of the coin it had casted for the sake of monetary sovereignty: the money of account had to have currency for the *imam*'s *sikka* to be meaningful, and, how else would that be visible for subjects if not through the market that circulated the ʿAlamgiri rupees? This deep state-market nexus was the central pillar of the Timurid money of account.

[332] "Several Rajasthani letters from Gokul Das, Sandhi Kalu Ram, Shah Bishan Das, Thakur Maha Das, Shah Har Ram, and Vamshidhar to Kalyan Das dated phalguna sudi 5, 1722 VS (February 28, 1666)," Doc. nos. 230, 231, 344, 355, *Amera abhilekha*, Bundle no. 3, Rajasthan State Archives, Bikaner.

[333] "Rajasthani letter from Vitthal Das and Vijay Ram to Kalyan Das dated caitra badi 13, 1722 VS (April 6, 1665)," Doc. no. 150, *Amera abhilekha*, Bundle no. 3, Rajasthan State Archives, Bikaner.

Price as the Exchange Value of Money:

Money of Account as *numéraire* for Price Determination

Price is the value of money and commodity-money is the substance (*ʿayn*) in which price is quoted. Legally, *qima* or *thaman* means exchange value; *qima* is "that which stands for something else." In price theory, money is fundamentally a relation; it expresses price ratios. Similarly, the *FA* defines precious metal irrespective of form as "it is the genus of prices or exchange values" (*ma huwa min jins al-athman*).[334] In modern political economy, we could say prices are quoted in specie terms in a commodity-money world. Debates on commodity-money begin with bullion as the absolute i.e., the Aristotelian genus, the essence of coin as one of its species. Therefore, English political economy and Hanafi legal political economy analyze money in bullion terms and not coined specie. Today, we do not reason in either genus or species as fiat money is devoid of essence, that is, not backed by any physical commodity as the standard of value.

For Hanafis, bullion is the ultimate intrinsic substance used as a sign or an indicator to quote the exchange value of a commodity. By knowing the price of each commodity relative to bullion, the relative exchange ratios between commodities were known. Bullion, and hence commodity-money, is the absolute standard. That is, all prices are nominally quoted and known in terms of precious metals. The jurists recognize precious metal as the money base. In abstract terms, money denominates the exchange relations between all other commodities. That is, money expresses price since any monetary analysis is always already a description of price phenomena.

[334] Nizam et al., *FA*, vol. 3, 217. The compilers add that conditional options (*khiyar al-shart*) should not be included by either party to the transaction.

Since there is no intrinsic concept of use value in Hanafi law, value is always exchange value (*qima*/*thaman*) which originates in the exchange process.

Hanafis perceive metals as nothing more than the standard in which prices are quoted. Hanafi jurists theorize that gold and silver are suitable to perform the function of money as they are "useless" in nature; they serve no meaningful purpose or interest (*faʾida*). Conspicuous consumption like ornamentation is not use for a purpose. As Burhan al-Din Marghinani (d. 1197) states, "for gold and silver being, with respect to their substance (*ʿayn*), of no purpose, are only desirable from such superiority."[335] Bullion's superiority is a product of the fact that it has no use value other than serving as the bases (*usul*) for determining exchange value. The price of bullion itself is not understood to be dependent on the cost of production in the long run as Adam Smith and David Ricardo do but freely floating in the international market. The reason for this divergence is historical experience. Most of the Muslim empires existed in areas without significant mines and largely relied on international trade for the supply of silver and gold and were hence accustomed to the idea that it was determined independently in the bullion markets. Europeans recognized this to be true in the short run; but in the long run, once the natural rate of profit is reached, the price of bullion tends to fall towards the cost of production or labor cost as Ricardo and Marx would have it. This theory had emerged in European monetary debates after the discovery of mines in the New World that led to a sharp fall in silver prices and the closing down of European mints owing to higher costs of production.

Among precious metals itself, gold is moreover absolute (*mutlaq*). Gold is the only money-commodity the Mughals measured in weight. Whether in the *Aʾin-i akbari* or in the *muhtasib*'s

[335] Marghinani, *The Hedaya*, 312.

daily market data, gold is reckoned by weight in *tola*s. On May 20, 1661, a *tola* of gold cost 15 rupees 8½ annas in Aurangabad's Shahganj.[336] However, the *muhtasib* quotes silver price as 11¾ *masha*s and 1 *surkh* per ʿAlamgiri rupee. Commodity prices other than gold are accounted in the ʿAlamgiri rupee. For the Mughals, the money of account is also the *numéraire*, the absolute invariant standard for computing exchange ratios. Certainly, for the Mughals, since the *numéraire* was itself another commodity, silver in intrinsic content, its exchange value was subject to changes: those fluctuations would further determine its real value and their exchange ratios were calculated too to know the nature of dearness. They knew that the ʿAlamgiri rupee was itself not an invariant standard though it was nominally so. Money price is the schedule of prices of basic commodities compared to the *numéraire* or money's money.

In Mughal accounting, prices are denominated as *x seer*s per rupee and never quoted the way we do it today: one *seer* costs x rupees. The Mughal method captures the relative value of commodities easily. In any price list, the Mughals mention the said rupee in which prices are being reckoned on the top of the document and then mention the buying and selling prices of every commodity vis-à-vis that rupee. Since bullion is the absolute standard, all commodity prices are reckoned as relative prices to the metallic currency. The Mughal method is one of using the rupee as a *numéraire*—this is the condition of equivalence—such that if one rupee bought 30 *seer*s of rice or 20 *seer*s of wheat or 10 *seer*s of pulses, the three commodities of rice, wheat, and pulses could be exchanged at 3:2:1 ratio, irrespective of the quantities involved. If the servant's rupee-wage was fixed at one rupee a month, all it required was to give a rupee's worth wage in any combination of different commodity-monies and commodities, and this had to be done on the spot

[336] "*Siyaha-yi nirkh-i balda-yi Aurangabad* dated 1 shawwal julus 4/1071 AH (May 20, 1661)," Doc. acc. no. IV/184, Telangana State Archives, Hyderabad.

prices. Say, paying the wage in 8 annas and 15 *seer*s of rice is equivalent to 12 annas and 5 *seer*s of wheat based on our hypothetical ratio. Those 8 or 12 annas themselves could be paid in silver coins or in copper *dam*s, or any other combination. In rupee exchange terms, their aggregate value is ultimately equivalent to one rupee. How *sarf* and *mal* exchange ratios are calculated depends on that day's or the nearest day's market prices. A document mentioning wages, prices, and incomes denominated in the ʿAlamgiri rupee as the money of account does not imply it is paid as such. An equivalent could always be found, and a payment made in any combination at the prevailing market rate.

On November 7, 1661, the local *qazi*, Hasib Allah faced this problem at the Sultangarh Fort in the Deccan. The soldiers demanded the arrears for two months' salaries that remained unpaid.[337] Since funds were lacking in the treasury, Hasib Allah decided to pay the soldiers in kind from the food grain stored in the fort. But how could the *qazi* estimate the value of grain (*nirkh-i ghalla*) without knowing that type and quality of grain's market price on November 7? He called for the nearby Aurangnagar market's grain traders who estimated the prices for wheat at 31 *seer*s per rupee (*gandum bi-vazn-i shahjahani fi rupya 31 sar*) and also bajra, pulses (*mash*), and two types of rice: *dudki* and *kumud*. The *qazi*'s concern was to pay the grain-equivalent wages whereas the soldiers would decide how much rice, wheat, and pulses they wanted depending on their preferences and household needs. If the soldiers felt they wanted to keep a part of their income in ready cash, all they had to do was sell a part of their grain to the same traders. It was for the soldiers to choose how much income they wished to keep in cash balances for transaction and precautionary demand. Therefore, from a pay slip (*qabz al-vasul*) denominated in the money of account, we

[337] Yusuf Husain Khan, ed., *Selected Waqai of the Deccan (1660-1671 A.D.)* (Hyderabad: Central Records Office, Hyderabad Government, 1953), 93; 130.

cannot assume that the actual payment always took place in ʿAlamgiri rupees. It could happen in other coins or kind or a combination of the two. There was no question of profit or loss while paying salaries; if paid in kind, the conversion took place at the nearest market price. Here too, general equivalence was dictated by the Islamic legal prohibition of unlawful gain (*riba*).

The legal fiction of the *dam*: Accounting estimation of unknown values

Since Babur's days, Hanafi law had placed the Timurids in an intricate valuation paradox of no small consequence.[338] Hanafis do not regard usufruct (*tasarruf*/*manfaʿa*) as a good (*mal*); it is valueless (*ghayr mutaqawwim*). *Mal* is a tangible and physically present object available for sense-perception and has a price (*qima*) attached to it as part of a transaction. Until price is known, it is merely a substance. How does a substance become *mal*? Once the price, its equivalent in money is known, it becomes *mal*. As Robert Brunschvig notes anything (*shayʾ*) has an intrinsic substance (*ʿayn*), which means the individuality, identity, and ipseity of the particular object.[339] Usufruct does not enjoy these qualities because it does not have existence (*wujud*) in the first place. Usufruct comes into existence with creation and human action. In an agrarian society, when the peasants sow the seed, water, and till the land, and the crop stands for harvest, usufruct has been transformed into food grain (*ghalla*), substance that is available for sense-perception. In Arabic, substance is called *ʿayn*, literally meaning eye, to indicate that it can be perceived and recognized as something that exists. Usufruct cannot be seen, though.

[338] For now, I have not analyzed pre-Mughal polities such as the Delhi and the Jaunpur sultanates. As they too followed Hanafi law, their agrarian revenue calculations and solutions would have addressed this paradox.

[339] Robert Brunschvig, "Conceptions monétaires chez les juristes musulmans (VIIIe-XIIIe siècles)," in *Études d'islamologie*, 303–4.

Both an ethical problem of valuation and a legal problem of contracting had to be resolved. When a contract, such as an imperial mandate (*sanad*) issued to create a benefice or the revenue assessment made on the peasant's land parcel at the beginning of the fiscal cycle, on the day of the contract, the value of the land was unknown since the crop was yet to exist and its market price known. Therefore, two independent contracts existed: one for its assessment or estimation (*jamaʿ*) and another for its realization (*hasil*), which would appear at the end of the fiscal cycle.

How does this process happen in the case of land revenue? On the day of the revenue collection, when the *mahajan* quotes his buying price, the *ghalla* becomes *mal* due to a market spot price attached to it. Now, the *ghalla* has price (*qima*), an exchange equivalent in money (*dayn*) and hence instantaneously becomes *mal*, that is, an exchangeable good. The *ghalla* is divided between the peasants and the state; the state sells it to the *mahajan* and realizes its value at the spot in the money of account, the ʿAlamgiri rupee. Instantaneously, the substance had become a *mal* whereas it took a whole crop cycle of several months for usufruct to become something, that is to come into existence through natural phenomena and human effort. This notion is at the substratum of the Transoxanian Hanafi jurist, Sarakhsi's definition that usufruct is generated over a temporal horizon, a series of time instances at regular intervals.[340]

So, before usufruct came into existence, how could one value it, that is, assign a price (*qima*)? If something does not even exist, how can one tell its price? This was the underlying problem for the Timurids, who had to make contracts, especially for revenue calculations and *jagir* allotments in terms of usufruct. Belonging to *millat-i hanafi*, as they were used to calling it rather than *madhhab*, the Timurids could not simply brush this elementary legal concept under the carpet.

[340] Johansen, *The Islamic Law*, 31.

The valuation of land revenue and *jagir* assignments had to be done in terms of usufruct as the actual monetary value of the land revenue was known *ex post facto* when the standing crop was cut, divided, and sold to the grain traders at the end of the harvest season. The *jagir* was issued at the time of the appointment (*talab*) creating a temporal mismatch between when the contract was approved, and its value realized over the course of the next several crop cycles. This circle of valuing the unknown value of usufruct had to be squared, and it had been squared by inventing a legal fiction: the *dam* equivalent to 1/40th of a rupee for reckoning purposes alone.

We should note here that Irfan Habib's definition of *dam* as the "money of account" poses conceptual problems.[341] No actual monetary settlement could be made in *dam* for it to be a money of account. In Keynes's words, "Money of account, namely that in which debts and prices and general purchasing power are *expressed*, is the primary concept of a theory of money. A money of account comes into existence along with debts, which are contracts for deferred payment, and price lists, which are offers of contracts for sale or purchase."[342] The *dam* is a unit of account for land revenue assessment *ex ante*, when the value of usufruct is unknown. At the end of the fiscal cycle, the *dam* ceases to exist. Revenue is realized (*hasil*) in the true money of account, the ʿAlamgiri rupee in which debts, prices, and contracts are expressed in general. The *dam* has only a limited purpose of accounting usufruct (*manfaʿa*) before its value (*qima*) is known in the money of account. The Mughal *dam* is a fictitious unit for valuation purposes alone for which no modern equivalent exists. The *dam* is a layer below the money of account, the current rupee in the name of the ruling Padishah. For the Timurids, only the value of usufruct is denominated in *dam*; the

[341] Habib, *The Agrarian*, 307n36.

[342] Keynes, *A Treatise*, 3.

value of all goods (*mal*) is denominated in the rupee, the money of account. Usufruct valuation is only apparent; rupee valuation is real, as in, one could exchange a rupee coin for say 20 *seer*s of wheat. But the *dam* is simply an accounting denomination and cannot be exchanged for anything. If *dam* were a money of account, all Mughal accounting would have been done in *dam*, which is not the case at all. Only where the valuation concerned land produce, which was the major activity related with usufruct, was this fictitious unit used since the price and the quantity variables were unknown to arrive at the value. Moreover, Mughals were metallists and could not accept a money of account that did not exist in precious metals. Unlike the real copper *dam* coin whose value fluctuated in the market, the fictitious *dam* was fixed by fiat. From the Timurid perspective, the *dam* enjoys none of the characteristics of money.

The *dam* is an invariable measure to calculate the value of something that was unknown at the time the contract was undertaken. The price and quantity would be known *ex post facto*. While this may seem convoluted for us, for the Mughals, the *dam* rendered it possible to estimate a fictitious value *ex ante* for budgetary estimates (today's states make estimates and actual receipts in the money of account). This constraint was a peculiar product of the Hanafi legal concept of usufruct upon which the Timurids built the principles of valuation in their fiscal system. We do not know who at Akbar's court came up with this ingenious solution, which has posed notorious difficulties in debates surrounding fiscality in Mughal historiography.[343] This legal fiction was what it was: a legal fiction; not a real value. The eighteenth-century author of a revenue manual, Yasin commented sarcastically that "the imperial *mutasaddis*, for the sake of dignity have fixed

[343] On the historiographical debates and Irfan Habib's disagreement with Moreland's views, see Habib, *The Agrarian*, 245–9.

big things for small ones."[344] Since the *dam* was fixed at 1/40th of a rupee, the contract showed a numeral figure that seemed large. A *jagir* expected to earn an amount of only half a million rupees was equivalent to two crore or 20 million *dam*s.

Then, how was the *dam* valuation arrived at? When price and quantity of the *ghalla* are unknown variables, the value is indeterminate. Therefore, the *dam* value was calculated based on the decennial revenue average (*dahsala*); it reflected an approximation close to the real values realized in the past ten years. The *dam* has a relation of correspondence with past real values but never coincided with them since the next fiscal year's real value was yet unknown but expected to be hovering around past averages as the land productivity remained stable in the short run. Thus, the fictitious *dam* measured usufruct *ex ante* when value was an unknown and was devised to fix the values of benefices that military officers received. Let's say the Mughals decided to allot a *jagir* worth 100,000 rupees and denominated it in rupees. For a Hanafi, this posed an ethical dilemma. First, this meant the real value was fixed arbitrarily when it was unknown. Second, if, at the end of the fiscal cycle, the land only generated 80,000 rupees, how could it be considered *ex ante* as 100,000 rupees? This was a practical concern of differentiating between speculative actions from those oriented by real values. The *dam*, due to its fictitious character, prevented aleatory (*gharar*) contracts that were inadmissible—a problem that pervades Timurid monetary and financial thinking.

There was another reason for the use of *dam*, the principle of equity for taxation that Abu Yusuf had laid out in his *Kitab al-kharaj*. Abu Yusuf's analysis already considers the

[344] S. Mahmud Hasan ed. *An Eighteenth Century Agrarian Manual: Yāsin's Dastūr-i Mālguzāri. Persian text and English Translation with an introduction* (New Delhi: Kitab Bhavan, 2000, 90).

interconnected nature of real taxation and how it could skew shares among the three principal groups within the Muslim State: the *imam* representing the state, military troops and officers, and the general populace among whom a fair distribution of the total income had to happen. Abu Yusuf argues that God decides the dearness and cheapness of goods, or, as we would say, price inflation and deflation are market determined. For Abu Yusuf, both a crop share and a fixed monetary value are detrimental to fairness.[345] A fixed cash tax is detrimental to the peasants if the grain prices are too low, which would increase the real incidence of tax. However, he is also averse to a fixed tax in kind as that would leave a deficit in state revenues due to low grain prices, making the *imam* unable to cover state expenditure.

The Mughal solution was an adjustable rent. Legally, the Mughal State's revenue was a share in the *ghalla* and not a fixed monetary rent; the monetary rent was a conversion of the *ghalla* share already agreed upon at the time of the annual survey (*jama'*) but realized at its prevailing market price on the day of the *hasil*. If this price fell either due to a bumper harvest or a general price crash, state revenues would fall unless offset by a high enough quantity of food grain. The Mughals could not exact more due to this shortfall in revenues by increasing real revenue incidence in case of a price crash. The jurists had fixed revenue in *ghalla* for a basic principle of equity: to leave the peasants with enough for subsistence. In case prices crashed, a fixed monetary rent would unduly translate into a higher liability to the peasants. However, if the share was fixed in kind, whatever it was would be left with them, they would have an equitable division. In case of bumper harvest, excess food grain remained with them while a price crash left them still with a fair share. In the worst-case scenario, if it came to mass starvation and famine conditions, the Mughals would

[345] Abu Yusuf, *Le livre*, 74–5. For the contextual reading of Abu Yusuf's concerns, see Løkkegaard, *Islamic Taxation*, 114. Also see Nizam et al. *FA*, vol. 2, 219–21.

remit the peasants of their rents as well as *jizya*. The ethical component of Islamic law and theology never allowed them to collect the impost on adult male income-earning *dhimmi*s at the expense of threat to their survival.[346] When shortfalls existed, *abvab* (additional imposts) were added over and above the revenue though that could pose other problems of how to distribute the revenue incidence over various groups. If land productivity declined, or crops failed, the real tax incidence on the peasants was higher.

Given its fictitious nature, the transitivity principle does not apply to the *dam*. One cannot convert the actual rupee values back to *dam* as Mughal historians have tended to do sometimes to make aggregate revenue estimates (*jamaʿ dami*).[347] Only, a one-way non-transitive relation exists between the *dam* (fictitious accounting term) and the rupee current in the reign (money of account). This valuation paradox of Hanafi *mentalité* had been squared. In any future year, the *dam* was recalculated during the annual revenue survey and a new *dam* value fixed based on the previous ten years.[348] Then, the past eleventh year, which had entered into the calculation earlier had been rendered redundant for any fiscal purposes. The *dam* was a moving ten-year average rather than a fixed estimate.

[346] A point concerning *jizya* principles often not emphasized in Indo-Islamic historiography is that the impost exempted women, minors, differently abled, and poorer sections of the society.

[347] Habib, *The Agrarian*, 453. Irfan Habib converts rupee figures for the revenues of the Mughal *subas* found in the works of Bernier, Thevenot, and Manucci back to *jamaʿ* in *dam*s. Habib adds, "[i]t is to be assumed that they are ultimately derived from some *jamaʿ-dāmī* tables" without explaining reasons for this assumption. Foreign travelers like Bernier were most likely quoting *hasil* figures realized in ʿAlamgiri rupees, the money of account.

[348] Compared to these ethical considerations, in Bengal, the EIC would follow the decennial census but abandon the *dam* and fix revenue in rupees, thereby, skewing the revenue system to the detriment of the agrarian communities.

The Sale of Price for Price:

Trading in Legal Tender Currencies against the Money of Account

Strictly speaking, in Islamic law, payments be made in the money of account in which contracts are denominated.[349] Adopting this policy was not technologically feasible in premodern states. Upon the accession of each Padishah, reminting all circulating coins held by state actors and private agents came with exorbitant costs and daunting logistic challenges. Instead, the Hanafi rule of *sarf* defined as the "sale of price for price" was applied for the exchange of different monies and bullion where the money of account enjoyed a premium called *batta* in common parlance. Its circulation and visibility in the market was a symbolic demonstration of sovereignty.

The *FA* defines money exchange as "the buyer's expenditure in the *sarf* transaction before taking possession [of the commodity being contracted]" (*istihlak al-mushtari fi ʿaqd al-sarf qabl al-qabd*).[350] The act of exchanging bullion or specie is also the time for both parties to check deceit or fraud (*mard*) such as clipping, finesse, weight, and the precious metal being the tangible substance one claims it to be.[351] Therefore, money exchange is a process where one metal transubstantiates (*tataʿayyun*) into another, either into another metal or another form of the same metal.[352] Money exchange is technically the "sale of price for price" (*bayʿ al-thaman bi'l-thaman*)

[349] Brunschvig, "Conceptions," 291.

[350] Nizam et al. *FA*, vol. 3, 226.

[351] Ibidem.

[352] Ibid., 223.

because the commodities being exchanged are money-commodities that behave as price denominators.

The early-eighteenth-century Mughal jurist, Qazi Thanawi composed *Kasshaf istilahat al-funun* in Arabic and Persian. As he says: "among the jurists, it [*sarf*] is the sale of price for price, genus for genus such as gold for gold or for another genus such as the sale of gold for silver" (*ʿinda al-fuqahaʾ huwa bayʿ al-thaman bi'l-thaman jinsan bi-jins ka-bayʿ al-dhahab bi'l-dhahab aw bi-ghayr jins ka-bayʿ al-dhahab bi'l-fidda*).[353] Thanawi goes on to add that precious metal's exchange is possible as it "has no advantage in its substance" (*la yantafaʿ bi-ʿaynihi*). Money exchange could be of two types. First, it could be changing different forms of the same metals such as a gold ingot of into a gold coin of unequal weight. They belong to the same genus (*jins*). Second, one can also exchange one genus for another genus of unequal weight. That could be exchanging a gold ingot for silver rupees or a silver ingot. In this second case, the substance (*ʿayn*) of the metals is different irrespective of their form as ingot or coin. Logically, as any Aristotelian knows, what applies to the genus (*jins*), is true for its subset, the species. Legally, coins are exchangeable for others of the same or different kind. In juristic language, it is conventional to call them *dinar* and *dirham*, the earliest coins of Muslim States, irrespective of when or where one was making a legal compilation. Thanawi, like all his Hanafi predecessors and contemporaries, maintains that a *dirham* is exchangeable against another *dirham* and a *dirham* is convertible to a *dinar*. By analogy, an ʿAlamgiri rupee can be exchanged against a Shahjahani rupee, both of silver content, as much as any silver rupee can be converted into copper *dam*s or ʿAlamgiri gold coins of distinct metallic base. Based on another juristic convention of citing predecessors in *fatawa* compilations, Qazi

[353] *Kashshaf istilahat al-funun: A Dictionary of the Technical Terms used in the Sciences of the Musalmans*, eds. Mawlawies Mohammad Wajih, Abd al-Haqq and Gholam Kadir, Part 1 (Calcutta: W. N. Lees' Press, 1862), 837.

Thanawi notes that he excerpts this legal opinion from *Majmaʿ al-barakat*, a work composed and dedicated to Aurangzeb ʿAlamgir c. 1689 by a well-known courtier, ʿAbd al-Rahman b. Mir al-Bukhari. *Majmaʿ al-barakat* itself frequently cites the *FA* as one of its sources for legal authority.[354] This process of legal transmission also reveals how increasingly the latest version of the imperial Hanafi canonization had become a reference point for further legal interpretation within a few decades of its compilation.

For Hanafis, sales, taxation, and loans as different forms of transactions are a contract of obligation, i.e., an obligation either to tender goods or absolve oneself of liabilities such as money to the creditor, rent to the leaser, money price to the seller, or salary to the worker. The basic element (*rukn*) of money exchange is similar to commodity exchange. The compilers of the *FA* specify by citing the Transoxanian jurist, Sarakhsi's legal opinion in his *Al-muhit* that the exchange of monies is akin to the sale of a commodity (*kama fi bayʿ al-ʿayn*).[355] The Transoxanian jurist, Marghinani adds that money exchange applies equally to obligations in credit relations as much as commodity transactions: "an obligation (*dayn*) may be commuted in the course of a *sarf* transaction."[356]

In commodity transactions, if the buyer pays in a legal tender other than the money of account in which prices are denominated, when does money exchange to take place? Marghinani does not forget to clarify that *sarf* ought to happen after the commodity transaction since money

[354] For the discussion of *sarf*, see *Majmaʿ al-barakat* by ʿAbd al-Rahman b. Mir al-Bukhari. MS Arabic 2587, Raza Library, Rampur, f. 235a–36b.

[355] This sale could be either a barter, exchange of a commodity for a commodity *(ʿayn bi-ʿayn*) or the exchange of a commodity for money (*ʿayn bi-dayn*). Both are sale contracts.

[356] Ibid., 315. Translation modified.

exchange is arbitrage, one of the best options of usurious behavior known in premodern societies. Marghinani is unambiguous in his legal opinion: "the *sarf* transaction happens upon concluding the *mal* transaction and not earlier as the opposite constitutes unlawful gain (*riba*)."[357]

The Mughal State meticulously abided by this normative principle rather than err on the side of usury. State contracts were always denominated in ʿAlamgiri rupees. For instance, land revenue peasants paid is a commodity (*mal*) transaction, legally defined as *ʿayn bi-dayn* or an exchange of a commodity against money. Land rent (*ujr*) was the state's share in usufruct for a consideration (*ʿiwad*) of leasing land. How did this exchange of monies (*sarf-i sikka*), legally a financial contract, operate? In Islamic contractual law, whenever monies are exchanged during a transaction, two contracts happen on the spot one after the other. If the traders who bought peasants' food grain at the time of revenue collection paid in older coin, *sarf-i sikka* was deducted from the ʿAlamgiri rupee's equivalent. After the conclusion of the first grain purchase agreement in ʿAlamgiri rupees took place, on the spot, the second contract: the conversion of other coins to the ʿAlamgiri rupee at the market rate (*sarf* defined as *dayn bi-dayn* or exchange of obligation for obligation) followed immediately.[358] For Muslim jurists, price changes based on the market's supply and demand were accidents of God's will. In a *sarf* transaction, Mughal pay offices and chanceries calculate the exchange rates collected from the nearest market data as they could not be arbitrarily fixed. Therefore, two contracts were involved if one made a payment in a currency other than the money of account at any Mughal pay offices in the subcontinent. Either one could go with the Shahjahani rupee, and the Mughal official would deduct the *batta* at its market rate or

[357] Marghinani, *Hedaya*, 313. Translation modified.

[358] Srivastava, *Siyaqnama*, 302.

one could go to the *sarraf* and pay a *batta* in exchange for its equivalent in ʿAlamgiri rupee that one could then deposit with the official. The Mughal State did the same when it had to pay for salaries, wages, and purchases. This was a two-way street: the Mughal State, though the largest financial household in the economy, was, in principle, like any other financial entity, and thus adhered to the same principles it dictated to its subjects.

The principle of *sarf* is both similar and dissimilar to money exchange today, though we operate in a slightly different world between the domestic and the international economy. Nation-states legally dictate that the payments be made in their legal tender. In a Delhi café, one cannot pay in Dollars. One could go to the money changer and exchange dollars for rupees for a premium. Here, the premium is determined by the spot exchange prices in the international money market and the exchanger's commission. Then, one could pay the café in rupees. Or, if one makes a payment with a debit card, the bank deducts the premium. The premium for exchange operations within the Mughal domestic economy was not solely due to the exchanger's commission and supply and demand of different coins. Unlike international exchange rate variations, the Mughal premium (*batta*) issued primarily from the fact that one was exchanging the ʿAlamgiri rupee, which was the money of account, a real coin, and a legal tender—the normative coin in which all contracts were denominated, to inferior monies, which were solely real coins acting as legal tender options for making payments. Today, of course, with the electronic synchronization of money markets across the world, exchange rates vary twenty-four hours a day. In the Mughal world, the ʿAlamgiri rupee's exchange rate varied daily in the major cities as we know from the time interval between *muhtasib* reports, which were centers of larger transactions and higher velocity of circulation and demand for transaction and much less often, perhaps, weekly, in the interior towns

and forts where the demand for money was less. That is, V and T of the QTM were weaker as one moved into the interiors.

Rather than demonetize older coins, the Mughal State accepted them at a discounted rate. We designate this system as the "partial demonetization" of the Shahjahani rupee by withdrawing its legal status as money of account but allowing it and other coins to circulate freely as legal tender coins. Their exchange rates vis-à-vis the money of account fluctuated depending on the available coins and wear and tear. All other coins prevalent in the Deccan or the coins from Akbar's and Jahangir's reigns had already lost their status of money of account with the termination of their respective reigns. Muslim jurists had developed *sarf* in order to avoid Gresham's law—bad money driving out good money—coming into effect. Rather, sound finance prevented private agents from hoarding ʿAlamgiri coins and letting old ones circulate. If all coins were exchanged at face value, fresh coins with longer durability would be stocked. This tendency of holding newer coins and getting rid of older coins would flood markets with coins that had lost sheen and even metallic content due to wear and tear. Aurangzeb ʿAlamgir's *sikka* with limited circulation would become an empty claim to his monetary sovereignty!

The ʿAlamgiri rupee is hence the money of account with an invariant standard with a fixed exchange rate against which all others float thus confirming his *sikka* had currency in real terms. For the Mughals, bullion in any form, either as ingots, own coins, or any other coins, was legal tender according to the *shariʿa*. So, the legal tender was different from the coin issued by the *imam*'s fiat. Hanafi law determined that precious metals were *sui generis* legal tender. The Muslim State's role was to establish the money of account though it was legally bound to accept all other currencies. This premium called *batta* in colloquial parlance originated *de jure* from state fiat that translated into all agents adjusting their preferences to the generalized model of partial

demonetization. Herein comes the state's capacity to decide what money is for the system of payments and the settlements of contracts, debts, and taxation. *Sarf* was an operation unique to Islamic monetary thought and conception of the value of money, partial demonetization of older coins, and the exchange ratio of the money of account used to denominate contracts and their settlement by other legal tender coins.

If we had doubts about the relation between the Hanafi *sarf* contract and the customary premium (*batta*), the late-eighteenth-century compiler of a revenue manual, Yasin makes is explicit: "*sarf* is an Arabic word meaning circulation, which in common parlance is called *batta*" (*sarf lafz-i ʿarabi ast bi-maʿna-yi gardash va dar istilah bi-maʿna-yi batta*).[359] The premium did not issue from mercantile community's preference for the current reign's coin. Premium was charged since the Mughal State's payments and taxes demanded that contracts be denominated and paid in the money of account, if not a premium was charged as the older coins were *de jure* partially demonetized.[360] This premium arose in turn from the Islamic legal idea of *sarf*—a legally defined exchange of bullion (genus) and coin (specie) at market rates. The Mughal State over the course of its rule and expansion had imposed the condition that this transaction be strictly enforced. That is, the state decided the "system of payments," which was generalized across private transactions whether one bought a house in Shahjahanabad, sold a *man* of rice in Aurangabad, or paid salaries to the grass cutters who prepared horse feed in Mathura. Why was this the case? If, in the eyes of the Mughal State, one Shahjahani rupee was worth less than one ʿAlamgiri rupee, why would private agents accept to lose by considering the two rupees as equivalent to each other

[359] Yasin, *Kitab dastur-i malguzari*, 90.

[360] Since the same principle was followed by pre-Mughal sultanates, large parts of the subcontinent would have already been accustomed to *sarf*. The integration of the Mughal economy led to its further expansion contributing to interlinkages between far off regions falling under a single money of account.

in their transactions? The general preference for the premium or brokerage on money exchange (*sarf*/*batta*) among the subcontinent's populations was a result of state fiat to decide how partially demonetized older coins were valued vis-à-vis the money of account used for the denomination of contracts in accordance with the Hanafi legal doctrine of *sarf*. This practice had been generalized through the emergence of merchant-bankers (*sarraf*) who specialized in money exchange, a principle of monetary management unknown earlier in subcontinent as it was peculiar to monetary conceptions of Islamic law.[361] While Mughal historiography has depicted money exchange as a pure market mechanism issuing from private preferences it was state fiat legally imposed on market operations. State functionaries like *qazi*s and *muhtasib*s verified if market conditions indeed reflected Mughal "system of payments" on any and every day across the subcontinent as long as Timurid public power was in force and enforced the Hanafi law of the land.

Determining Market Prices for Accounting:

Computation (*ihtisab*) and the Logic of Daily Auditing

The Islamic legal concept of *ihtisab* (computation) plays a crucial role in collecting data on bullion prices (*sarf*) and commodity prices (*mal*). The *muhtasib* (censor) is a surveyor of market prices; he is also in-charge of moral policing.[362] Sunami's (fl. fourteenth century) *Nisab al-ihtisab*

[361] Hanafi jurists are aware of another acute problem: combining exchange of monies with other real and credit transactions. In the *FA*, the miscellaneous issues section (*mutafarriqat*) discusses *wakala* (representation), *rahn* (pawn), *hawala* (exchange of debts) and *kafala* (financial surety) in so far as they affect *sarf*. That is, the use of one legal provision with others leads to a variety of liabilities. Even in a condensed form every section of the *sarf* chapter in the *FA* has consequences for Mughal actions and a practical use can be found in the subcontinent's commercial and financial relations. For now, we have not analyzed these additional legal and economic consequences.

[362] See Zameeruddin Siddiqi, "The Muhtasib under Aurangzeb," *Medieval India Quarterly* 5 (1963): 113–9. On the *muhtasib* in Muslim societies, see Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century* (Cambridge: Cambridge University Press, 2005); Kristen Stilt and M. Safa Saraçoğlu, "Hisba and Muhtasib," in *The Oxford Handbook of Islamic Law*, ed. Anver M. Emon and Rumee Ahmed

is the one of the earliest manuals of computation composed in South Asia. Sunami lays out the broad provisions of this office: "the *muhtasib* is allowed to patrol the market" and "the *muhtasib* is allowed to make inquiry regarding the conditions of the market people without anyone having complained to him about their dishonesty."[363] Sunami, whose work was known throughout Indo-Islamic culture and remembered in Nizam al-Din Ahmad's *Tabaqat-i akbari*, also gives us clues to tasks such as quality control and the regulation of adulteration, price fixation, excessive profiteering the *muhtasib* performed. Sunami extends the *muhtasib*'s customary task (*ʿurf*) to quality control of betel leaves peculiar to the region: "Ordering the sellers of *tanbul* to keep clean their water and cloths and to keep their lime free of pebbles."[364] From the peasants to the Padishahs, chewing betel was a reverie. Whether one worked in the fields from sunrise to sunset or sat on the throne for hours at end listening to petitions and accepting homage, betel chewing helped suppress hunger. In the subcontinent, betel and lime quality had become the *muhtasib*'s customary responsibility, which was unknown in West Asia.

In Mughal chanceries, every market day's prices were entered in the *siyaha-yi nirkh* (price inventory) based on the *ruznamcha-yi nirkh* (daily report of prices) that the *muhtasib* submitted once he went to the market and collected them. This practice common to the Ottomans,[365] was also

(New York: Oxford University Press, 2018), 327–55. Also see Walter Behrnauer, *Mémoire sur les institutions de police chez les Arabes, les Persans et les Turcs* (Paris: Imprimerie Impériale, 1861). For a conceptual relation between law and censorship, see Pierre Legendre, *L'amour du censeur. Essai sur l'ordre dogmatique* (Paris: Seuil, 2005).

[363] Partington, "The Nisab," 255.

[364] Ibid., 45–6. I have corrected the misspelling of *tanbul* in the original translation.

[365] On Ottoman *muhtasib* and *nirkh*, see Ronald C. Jennings, "Kadi, Court, and Legal Procedure in 17th C. Ottoman Kayseri: The Kadi and the Legal System," *Studia Islamica* 48 (1978): 154–7. Also see M. Safa Saraçoğlu, "Economic Interventionism, Islamic Law and Provincial Government in the Ottoman Empire," *Journal of the Ottoman and Turkish Studies Association* 2, no. 1 (2015): 59–84.

practiced by the Kacchawaha chancery who vernacularized the list as *rojanama nirakha*.[366] The Mughal pay offices could not operate without *sarf* and *mal* data. The Mughals' own accounting would not work without knowing the market prices of commodities and coin exchange rates. When the *muhtasib* was appointed, a detailed *sharh-i khidmat-i ihtisab* was prepared by the local *divan*, which laid out the rules of his activities but more importantly, how he had to send information through "the daily report of prices" (*ruznmacha-yi nirkh*) "in self handwriting and seal" (*ba khatt va muhr-i khud*).[367] Any errors in reporting were the *muhtasib*'s liability (*dhimma*); he was liable for false reporting, manipulation, or fraud. If found cheating, he would be asked to testify for misreporting.

Briefly let us take some of the interesting ways in which price data was collected and the kind of historical analysis they permit us. We have various price lists from the cities and towns of Aurangabad *suba*, which were sent up to the provincial *divan*'s office for data scrutinization and account verification. On May 20, 1661, Aurangabad's *muhtasib* Shaikh Muhammad Saʿid and *darugha* Mir Abu al-Qasim went out to four wholesale markets in the city: Shahganj, Aurangpura, Begumpura, and Aʿzamganj for routine collection of price data.[368] What was the situation in Aurangabad's money exchange market on May 20? As per the *sarf* list that Muhammad Saʿid submitted, the ʿAlamgiri rupee exchanged at its officially fixed rate (*zabita*). In copper terms, the customer's buying price was 15 *tanka*s 6.25 *dam*s and its sale price 15 *tanka*s. Numerous coins were in circulation and available in the regional center, Aurangabad's Shahganj market: ʿAlamgiri

[366] For examples, see "*Rojanama nirakha*," Doc. no. 186, *Amera abhilekha*, Bundle no. 2, Rajasthan State Archives, Bikaner.

[367] Srivastava, *Siyaqnama*, 89.

[368] "*Siyaha-yi nirkh-i balda-yi Aurangabad* dated 1 shawwal julus 4/1071 AH (May 20, 1661)," Doc. acc. no. IV/184, Telangana State Archives, Hyderabad.

and Shahjahani gold *ashrafi*s, ʿAlamgiri, Shahjahani, Chalini, Berari, and Khazana silver rupees. Moreover, the following *hun*s (Southern Indian gold coins) too circulated: Achut Rai, Kishan Rai, Ubhuk, Dev Rai, Jutur, Ganesh Madura, Bhumra, Mabrah, Sri Rang Rai, Chaul, Shiv Rai, Chand, Govind Padshahi, Mylapori, Tirumala, Portugesi, Tubaki, Muhammad Khani Krara, Adhoni, Ghalib Khani, Harihari, Ambershahi, Dharwar, Takhati, Bhakki (old and new), Nisari, and Nellori. Moreover, both Miranshahi and Mahmudi Changiz Khani *muzaffari* coins as well as Dabholi and Hurmuzi *lari*s could be found; they had come from the ports of Dabhol on the Arabian Sea and the Straits of Hurmuz respectively.[369]

While there has been much debate about the price level, often data found in works such as *Aʾin-i akbari* are one off.[370] The above-mentioned data may seem like a one-off document but what happens if we take a series of price data as collected in any city? The *muhtasib* of Udgir Fort sent the *nirkh-i bazar-i qasba-yi Udgir*, appended to the *Ruznamcha-yi vaqaʾiʿ* (daily report of the events) to Aurangabad. For the fifth regnal year (1072–73 AH/1662–63),[371] we have price data for twenty-seven market days in this small, fortified town where the local market happened on an average five times a month.

[369] Coins from even Harihara II's period (r. 1377–1404) were available and still legal tender.

[370] Some of the data used so far include *Zavabit-i ʿalamgiri*, MS Or. 1641, 48b–49a; *Dastur-i sarrishtajat*, MS Or. 83, Edinburgh University Library, Edinburgh, 5a–b among others. However, these prices are market prices of a particular day, which do not convey much outside the context.

[371] "Various *Ruznamcha-yi vaqa'iʿ* sent from Udgir for the following dates in julus 5 (1662–63): 25 muharram, 28 muharram, 3 safar, 5 rabiʿ al-awwal, 12 rabiʿ al-awwal, 13–16 rabiʿ al-awwal, 17–19 rabiʿ al-awwal, 21 rabiʿ al-awwal, 7 rabiʿ al-thani, 8–10 rabiʿ al-thani, 14 rabiʿ al-thani, 15–17 rabiʿ al-thani, 21 rabiʿ al-thani, 5 jumada al-awwal, 8 jumada al-awwal, 12 jumada al-awwal, 14 jumada al-awwal, 18 jumada al-awwal, 14 jumada al-thani, 25 jumada al-thani, 28 jumada al-thani, 9 rajab, 12 rajab, 16 rajab, 26 rajab, 3 shaʿban" Doc. acc. nos. V/1032; V/1042; V/1050; V/1328; V/1353; V/1370; V/1375; V/1390; V/1435; V/1459; V/1472; V/1501; V/1543; V/1653; V/1669; V/1703; V/1718; V/1726; V/1815; V/1864; V/1889; V/1930; V/1938; V/1944; V/2008; V/2027, Telangana State Archives, Hyderabad.

In the fifth regnal year, Udgir, Badshahi and Ajit Rai *hun*s were available. Among silver coins, Alai and Golkondi rupees were common, and only occasionally do Chalni and Shahjahani rupees appear in the market. For those verifying these price data at the chancery, a point would be evident: even five years after Aurangzeb ʿAlamgir's *julus*, the money of account had still not penetrated deep inside the Deccan. Even in the sixth year, Udgir had no ʿAlamgiri rupees.[372] Thus, we get a sense of the delays in temporal diffusion of the money of account as would have Aurangabad's regional chancery. This was unlike in Aurangabad, Daulatabad, and Baglana, larger cities of the Deccan where the money of account was already in circulation. The *sarf* rates remain quite stable over several market dates. The Badshahi *hun* meant as a store of wealth fluctuates less perhaps owing to its stable supply and demand anywhere between 3 rupees and 12 *tanka*s to 3 rupees 10 *tanka*s 37.5 *dam*s for its buying price and its selling price at 3 rupees 12 *tanka*s 37.5 *dam*s to 3 rupees 11 *tanka*s 2.5 *dam*s. The Golkondi silver rupee fluctuated much more: the buying price between 15 *tanka*s 25 *dam*s and 16 *tanka*s 12.5 *dam*s and the selling price between 16 *tanka*s 12.5 *dam*s and 15 *tanka*s 37.5 *dam*s. From the differences of the buying and selling prices for all commodities and money, we can also estimate variations in the profit margins—the gross profits for commodities of the traders and arbitrage gains of Udgir money-changers inclusive of their transport, labor, and intermediation costs. The fact that some reports include market prices across several days show that once or twice in the month markets happened over successive days, perhaps, also for those from the surrounding areas could come and buy their provisions.[373]

[372] "Various *Ruznamcha-yi vaqa'iʿ* sent from Udgir in julus 6 (1663–64)," VI/18; VI/1262, Telangana State Archives, Hyderabad.

[373] While I have not corroborated it, these documents have to be read alongside reports and documents conveying the seasonal passage of *banjaras* who conducted most of the long-distance trade, fluctuations in grain production, problems with accessibility and robberies on highways.

What about *mal*? Wheat, jawar, gram (*nakhud*), ghee, salt, two to four varieties of oil depending on the season (sesame, linseed, sunflower, and *karhila*). Sesame and linseed oil were available throughout the year. At times, jaggery of three types, which would have depended on when the sugarcane was harvested processed in March. Cotton was available in October as the *kharif* crop would have been harvested in the Deccan even today. Sesame seeds were rarely available.

In Mughals socio-economic realities, two prices exist: the buying price (*kharid*/*bayʿ*) and the selling price (*furukht*/*sharaʿ*) and not a single equilibrium price. Their difference being the trader's margin after deducting costs of employing workers and procurement. The documents, therefore, give us an indication of the rate of gross profit margins for each commodity, i.e., the trader's cost.

For Mughal accounting audit, these market prices were necessary for *sarf* and *mal* as they too were agents buying commodities and making payments for all levels of officers. Mughal agents could cheat the state and commit fraud easily for unjust enrichment (*ghabn*). The imperial chancery had allotted 2 *seer*s of oil (*muvazi du asar*) per day for lighting the lamps of the Daulatabad Fort in 1644.[374] It was the *khazanchi*'s responsibility to send a *shagird pisha* to buy oil in, let us say, Aurangabad's Shahganj and compare the market rate and record it so that the *tahvildar* could verify that none of the intermediaries had pocketed a few *dams* worth oil by producing a false receipt from Shahganj's oil traders. They could commit fraud in three ways: falsely quoting the market price of oil (*mal*), the exchange rate between the coins (*sarf*) if one had been sent them with an

[374] Yusuf Khan, *Selected Documents of Shah Jahan's Reign*, 118. For such consumable commodities, allocations were done in quantity rather than price as prices fluctuated whereas the lighting needs necessitated a fixed quantity of oil consumption daily.

ʿAlamgiri rupee to be exchanged against copper *dams*, or both. Auditing was a fundamental feature of chancery accounting every day to prevent fraud and embezzlement.

While all this sounds extremely messy or cumbersome for us, are we any different? We still follow the same principles when we hand over receipts to our institutions, universities, pay offices, municipal corporations, etc., excepting that our receipts are standardized and do not require as much scrutiny. For us, it is easy, given the standardization of receipts with names of firms, registration numbers, tax codes, and the instantaneous market rates printed on bills and tickets whereas in the Mughal Empire, one had to physically go to the market and collect the data from the traders. When we make payments in international currency, the spot exchange rate is taken into account. When our universities or offices reimburse them, they take that day's spot exchange. That is the market principle, which leads to a marginal difference between exchange rates of the two days. Half the Mughal chancery's work was to verify if their payments and receipts had been computed according to spot market prices, if not, they had been cheated, be that by the *shagird pisha* or the *mahajan* or both—it was also evidence their subjects (*raʿiyat*) were being cheated too. Could they be so unconcerned of their plights? The market comes to our homes these days, in Mughal India, one had to go to the market. Because chancery payment is also nothing but a market operation; buying and selling but also debt and credit that must be accounted for. The system of *sarf* and *mal* as well as *ihtisab* (computation) was precisely a system created for smooth functioning of payments, accounts, and money transactions.

Price data collection of *sarf* and *mal* was rendered possible by the legal institution of *ihtisab*.[375] We have daily data from the interiors of the empire that exist in the verifiable price list

[375] In smaller towns, the *qazi* was appointed with explicit charge of *ihtisab*. Given the low demands for their services,

documents sent to the provincial centers for verification. We can construct price indices out of such extensively available information. Unlike Fisher's P, the aggregate average price as the basket of commodities and the general price index, the Mughal State's data at various levels were a set of market price series of individual commodities. basically, the essential ones—the minimum subsistence of most of their subjects. Om Prakash notes the difficulty in constructing a "modern consumer price index" for the Mughal economy since price data from European company archives concern only export commodities that cannot be considered a basket of commodities meant for domestic consumption.[376] The prioritization of European company export data has been accompanied by the neglect of Mughal domestic data for each market day's prices made in diverse notational systems, be they, Indian *siyaq* or Kacchawaha Hindu-Arabic notations. I have taken the Udgir example to illustrate the purposes of *ihtisab* in Mughal account auditing as well as the statistical analysis it lends itself to. Such data exists for small market towns like Baglana, Trimbak, Ramgir in the Deccan, Rewari, Tijara, and Palwal in Shahjahanabad *suba* as much as Malwa, Khandesh, Agra, and as far as Kabul. Even differences between, say, Shahjahanabad's wholesale prices at Shahganj and Jaisinghpura's retail prices are available since Amer kept asking its local officials to send Shahjahanabad's latest *rojanama nirakha* regularly to finalize auditing Jaisinghpura's accounts. Unlike data that historians have excerpted from chronicles where we neither know the market nor the date, here we have daily price data submitted as it was on each market day authenticated by the *muhtasib*'s seal. That is the high degree of certainty we can have

little need existed to appoint two separate persons and pay them salaries to undertake the activities separately.

[376] Om Prakash, "Precious Metal Flows," 65.

of its authenticity since it was made for Mughal chanceries to be able to do accurate auditing who have already verified them for historians' use.

Therefore, modern price indices can be created from such extensive Mughal domestic data of commodities and their availability depending on local produce, season, tastes and preferences, and purchasing power while adjusting them for *sarf* exchange rate fluctuations.[377] Larger cities had a wider range of grains, pulses, and spices available than smaller ones. In Udgir, rice was not available in the market; for Udgir's price index we can omit rice as it was neither grown in the Deccan nor part of the food habits and local preferences. *Muhtasib* reports already give the components of the basket of commodities. For Aurangabad, we can bracket luxuries such as soap, saffron, and other spices meant for conspicuous consumption. In addition to auditing, these price data also gave the Mughals the means of knowing the purchasing power, assuming, as Keynes notes, tastes remained stable.[378] This is entirely plausible as the Indian peasantry and urban classes' tastes would not have changed much in the short and medium run. It is necessary to chart out these short and medium run fluctuations before we construct long run time series price trends for the seventeenth and the eighteenth centuries.

Principles of Mughal Monetary Sovereignty

In Keynes's words: "the State…comes in first of all as the authority of law which enforces the payment of the thing which corresponds to the name or description in the contract. But it comes

[377] While the adjustment of prices quoted in different currencies to the ʿAlamgiri rupee may seem straightforward, in reality, as *sarf* rates varied across the subcontinent day after day depending on the local market conditions, creating a statistically uniform model is complicated.

[378] Keynes, *A Treatise*, 85.

in doubly when, in addition, it claims the right to determine and declare *what thing* corresponds to the name, and to vary its declaration from time to time—when, that is to say, it claims the right to re-edit the dictionary."[379] The Mughal State declared that payments be denominated in the ʿAlamgiri rupee from 1658 onwards, and, from time to time, fixed its exchange rate to the copper *dam* depending on market price fluctuations to avoid a speculative run. Initially, the ʿAlamgiri rupee was fixed at 15 copper *tanka*s. As and when the need arose, the Mughal State re-edited the dictionary, that is, redefined the money of account after observing specific monetary and price conditions in the market.

The Mughal economy operated under trimetallism of gold, silver, and copper with fixed rupee *numéraire* for price regulation. With gold acting as the primary store of value, silver as the primary medium of exchange for large payments and to a limited extent a store of value, and copper for smaller daily transactions, trimetallism would be never driven away and end up in bimetallism or monometallism for another reason of monetary management. Unlike European states that fixed a legal mint ratio, the Mughals abhorred price fixation. Bullion brought to the imperial mints was coined in its own metal or exchanged at the market exchange price. Therefore, private financiers in the Mughal Empire had no scope to profit from arbitrage between the market and mint exchange rates. By state fiat, usurious (*ribawi*) transactions in precious metals had been rendered impossible. No metal would be entirely drained out leading to bimetallism or monometallism.

The Mughal State's monetary theory and policy was to fix an exchange ratio at market prices for the money of account, fix seigniorage charges at the mints, and constantly verify price

[379] Ibid., 4.

fluctuations of basic necessities and currency exchange across the subcontinent. This was because Mughals had an ideal market-based price-fixation model such that they saw the money of account as the *numéraire*. Essentially, market prices are a market quotation of exchange ratios that vary depending on supply and demand. For denomination and estimation purposes, the current ʿAlamgiri rupee was used as if it were an invariant though intrinsically as silver commodity, its actual value could appreciate or depreciate against metals and commodities.

In the early modern world, states had to deal with unique problems that global commercial integration and silver flows had on their Balance of Payments. Mughal monetary history has focused entirely on exogenous factors and long-term trends and hardly on the endogenous factors that determined the short and medium-run objectives of the Mughal State. The extent to which Mughal historiography has been overshadowed by the concern of reducing Timurid public power to "military fiscalism" is startling not only because all these legal principles outlined above have been evaded. Even the fact that Aurangzeb ʿAlamgir had Balance of Payments data has gone unrecognized. The imperial court collected a type of data, which should have interested historians arguing on the basis of the QTM as that Mughal data *is* nothing but the primary exogenous factor determining the long-term trend of money supply. The other side of this coin is that in Indian Ocean economic history, South Asian maritime trade data has been constructed out of collating various European company records. Why ask private agents how much they exported when the Mughal State can tell us the quantity, the value, the customs duties, the seigniorage charges, and the bullion inflows?[380] Even today, who collects the Balance of Payments data that reflects all

[380] For a representative example, see Ashin Das Gupta and M. N. Pearson, eds., *India and the Indian Ocean 1500–1800* (Calcutta: Oxford University Press, 1987). Not a single reference can be found to a Mughal document whereas archives of European companies and the subcontinent's colonial rulers are well represented. This is surprising for a volume discussing the early modern period which was dominated by Mughal rule over South Asia. I am leaving aside the *Aʾin-i akbari*, which is cited, as elsewhere, as if it formed a template for everything to come for more than a century

private external trade if not the state? The state is the only institution that can reveal the macroeconomic picture to private agents, though, the Mughal State had no interest in releasing such information for public perusal. Wherever Aurangzeb ʿAlamgir was, he knew the aggregates. No doubt Surat's port agents knew their records though they had no clue what Chittagong's situation was. The Mughal imperial court had detailed records of increase in money stock from the inflows in port cities like Surat, Baruch, Cambay, and Chittagong as much as the export values of each commodity. Though there was no way to know money stock (M) at any point of time since money was held by different agents across the empire, increase in money stock (ΔM) entering the economy was regularly known.[381]

The compiler of *Mirʾat al-haqaʾiq*, Iʿtimad ʿAli Khan meticulously copied down all that he found from Surat papers, perhaps, still lying in the port's customs offices in the eighteenth century. He had found the copies of the port register (*sar rishta*) prepared under the seal of Surat's *mutasaddi*, Amanat Khan, who had been transferred from his position as Aurangabad governor in the 1690s.[382] In 1108 AH (1696–97), the "customs of the harbor of the auspicious port of Surat" (*mahsul-i furzat bandar-i mubarak Surat*) worth 11,70,000 rupees was the state income (*amada ast*) and had been entered into the imperial current accounts (*dakhil-i sarkar-i vala shuda*).[383] This statement of facts (*haqiqat*) including customs duties, seigniorage charges, quantities of different

under Mughal rule lacking any change, innovation, or interest in day-to-day ground realities.

[381] See Shireen Moosvi, "The Silver Influx, Money Supply, Prices and Revenue-Extraction in Mughal India," *Journal of the Economic and Social History of the Orient* 30, no. 1 (1987): 47–94. This method is doubtful as no correlation exists between coin hoards found in Uttar Pradesh, due, largely, to randomness, and actual coin output from Mughal mints in any year. For an early critique of Moosvi's approach, see, Subrahmanyam, "Introduction," 52–4.

[382] Shah Nawaz Khan, *Maʾasir al-umaraʾ*, vol. 1, 288 (Eng. trans., vol. 1, 231).

[383] *Mirʾat al-haqaʾiq*, MS Fraser 124, Bodleian Library, Oxford, f. 101b.

commodities exported and imported, the regional provenance of export goods, remained in Surat whereas the original version went to Aurangzeb ʿAlamgir. Since he received from everywhere, he had the total Balance of Payments data to know the bullion flows, seigniorage value, import and export customs duties collected, and what to make out and how to regulate the political economy.

The Timurids had a share in exports and imports. Moreover, due to a secular trend in export surplus, i.e., exports being higher than imports or NX (X – M) being positive, successive bullion inflows brought in greater seigniorage revenues. Approximately 8.5 percent of the export value (3.5 percent export duties and 5 percent as seigniorage charges for bullion inflows) and 3.5 percent of import value went to the Mughal treasury. Surat's total trade for the lunar calendrical year of 1108 AH (1696–97) adds up to 33.4 million rupees of which 27.5 million rupees alone was bullion inflow owing to exports. The bullion outflow due to imports was 5.9 million rupees. The net inflows of bullion into the Mughal economy were 21.6 million rupees. Seigniorage charges on total bullion inflows (and not on the net inflows) came to 1.375 million rupees. The total income earned by the Mughal State was 2.545 million rupees. We have Surat's side to which we have not included Baruch's and Cambay's and whether Chittagong's data from the other side of the subcontinent survives, we have not yet verified. Some of the exports commodities and their provenance were: sugar from Bengal (*shakar ki az Bangala mi ayad*), betel nut from Mangalore (*basta-yi supari ki az Manglur mi ayad*), cardamom (*basta-yi ilaichi*), tobacco (*tanbaku*), and pepper (*basta-yi falfal*) among others.[384] So, we know the partial trends of 1696–97. Surfing through every piece of paper ever produced in the Mughal world that survives to this day would

[384] Ibid., f. 366b.

open possibilities to critically build data sets by exploring their implicit assumptions and reorganizing them in contemporary vocabulary.

With bullion inflow data, the Mughals could anticipate inflationary consequences and their gradual impact on prices in the interiors of the subcontinent once money supply had been distributed. All Aurangzeb ʿAlamgir had to do with such extensive data at his disposal was add exceptional duties (*abvab*) during price rise to withdraw money supply from circulation and prevent inflation and vice-versa, reduce or abolish duties to increase money supply and stem any deflationary trends. Often, such details that occasionally appear in narrative sources have been mentioned but rarely correlated with the economic realities that may have led to taking these decisions. Moreover, inflow of bullion from international trade was kept separate and had to be minted because this money stock came from outside the realms, whose differential had to be known, unlike existing coins that formed part of the pre-existing money stock. This was also done to know if the balance of trade surplus approximately equaled the bullion inflow.[385]

Unlike European monetary management which seems to have tolerated inflation at the cost of fiscal instability and credit creation, Timurid management chose maintaining price level stability at the cost of credit expansion in macroeconomic terms. As both Keynesian and modern monetary theory emphasize, there is a tradeoff between inflation and state spending. One could tolerate inflation for expanding credit and money supply or restrict the expansion of money supply for the sake of maintaining the price level. The Timurids opted for the latter given that their outlook on taxation, fiscal doctrine, and public finance's relation to private finance were radically different.

[385] Mughal oversight was also necessary to prevent siphoning off its customs duties in undeclared trade and international smuggling.

The lack of a price revolution in early modern South Asia may not entirely be accidental; it was a calculated monetary policy of the Mughal State of regularly thesaurizing export and import duties and annual revenue surplus (revenue – expenditures). What did the thesaurization of the state endowment additionally do given the direct relation between money supply and price level? It offset inflationary consequences of bullion flows; more money coming from abroad was regulated so that it was not chasing the same amount of goods. Whether it was an intended or unintended is hard to prove for now, but the consequence remains unchanged.

In the commodity markets, internal prices were carefully verified as much as export prices and quantities were known. Indeed, all price data was sent weekly or monthly through news reports from each town and fort to regional centers like Aurangabad. At Aurangabad, the in-charge scrutinized those data to ensure anything suspicious did not arise. If there had been a steep rise around a region, it was certainly an indication of food scarcity. Was that also a signal of crop failure or due to bottlenecks in transport such as the unavailability of oxen, carts, or roads being unpassable? Where was the food grain procured and what had happened to the *banjara*s who were expected around this time of the year? If it was an artificial scarcity, they could get the *faujdar*s to investigate and clear the roads; ask the *mahajan*s. If it were a sign of crop failure, a far more urgent concern for revenue realization as much as signs of a palpable famine, the issue would be communicated to the imperial court, or even to Aurangzeb ʿAlamgir personally even if he was camping on the highway wilderness between Delhi and Burhanpur. In October 1681, due to supply constraints, the wheat price in Ajmer had risen to 8 *seer*s per rupee (2 annas per *seer* of wheat), already a dangerously high price that could lead to mass starvation and food scarcity, which was duly reported to the Padishah who would gather more information and order an investigation to

finalize his decision to remit land rents.[386] In years such as 1661, when a major famine broke in the Yamuna doab, or 1668 in Bengal, he imposed an embargo on food grain exports based on the Balance of Payments data.

Any increases in money supply were largely determined by exogenous factors such as prices in international money markets and their inflows paid for from an export surplus. If bottlenecks and shortages existed worldwide, prices of a particular metal rose steeply as happened with copper from the 1680s onwards.[387] As Habib notes, for nearly two decades from the 1690s, copper prices had stabilized at a high price and not fallen. One possible explanation for copper prices not going up further was the revival of Bairat's copper mines in the 1690s and the early 1700s. Bairat, not far from Kacchawaha *vatan jagir* had an imperial mint since Jahangir's reign. Bairat was one of the few major copper mines in the Mughal realms though its quality and output were not worthwhile unless international prices were too high for domestic copper production to be competitive vis-à-vis Surat's copper imports. The Rajput prince, Bishan Singh, the *zamindar* of Lamba, Hari Singh, the Mughal *divan-i khalisa*, ʿInayat Allah Khan, *amin* and *faujdar* of Bairat, Muhammad Raza, Mewat's *faujdar*, Shukr Allah Khan, the *faujdar* and *mutasaddi*s of Ajmer—all their *gumashta*s and *vakil*s exchanged letters detailing hiring workers from the hinterland, undertaking repairs of the mines, and arranging mining tools and equipment. They also sourced coal supplies from Ajmer to Bairat's imperial mint for coining.[388] These officers were in their respective jurisdictions connected by the highway artery from Shahjahanabad to Ajmer through

[386] "*Vaqiʿa* dated 13 shawwal julus 25/1092 AH (October 16, 1681)," Doc. no. 310, *Akhbarat-i darbar-i muʿalla*, Bundle no. 9, Rajasthan State Archives, Bikaner.

[387] See Habib, *The Agrarian*, 443–4.

[388] "Persian *vakil* report from Kesho Rai to Jai Singh II dated 2 shawwal 1117 (January 6, 1706)," Doc. no. 1203, *Persian Vakil Reports*, Bundle no. 5, Rajasthan State Archives, Bikaner.

Mewat, Bairat, Amer, and Lamba. Bishan Singh was stationed, at times, in the Yamuna doab quelling Jat rebellions while Aurangzeb ʿAlamgir and his imperial camp were a thousand kilometers away in the Deccan. The Rajput *vakil*s from the imperial camp would send their reports to Bishan Singh and the Amer chancery whereas Amer officials directly corresponded with Bishan Singh's personal secretaries. The Mughal imperial chancery was in touch with *faujdar*s and *mutasaddi*s, they would in turn write to Bishan Singh and his subordinate Hari Singh, who would also correspond with the Rajput chancery. These networks of letters, petitions, orders, and commands survive to this day and illustrate the exemplary nature of Mughal information economy coordinated by the imperial court, the nodal agency at the helm of state affairs. The transactions and their results were then reported to Aurangzeb ʿAlamgir, who had the supervisory role (*tadbir*) as the *imam* over mining and minting, that is, monetary sovereignty. The mines and mints were, as per Islamic law, state property, and the state had a one-fifth share in the mining output.[389] Like other lands, mine management was often sub-contracted to private agents. The one-fifth share was the fixed rent over and above which a percentage of the mine output went to the state as rent paid for mine farming. To further add, when the copper was taken to Bairat's mints for coining, seigniorage brought in further incomes to the state. The state's eminent domain—the mine as an asset, generated wealth; every transaction contracted for production and coinage was an independent contract bringing in more revenues.

Symbolically and ontologically, the state creates the money of account and gives it sanction. From Aurangzeb ʿAlamgir onwards, everyone accepted his money as it had his stamp, a social device with state sanctioned authority. Once it emits money, a state's paramount function is

[389] This is like eminent domain restrictions that apply to natural resources such as mines and petroleum deposits today.

to keep its real weight proper and try maintaining its real value; or debase it if there were serious financial reasons to do so. But in doing all this, the problem is how to maintain trust, taxation, and continuity of contracts for private agents. One of the primary concerns of the *imam*'s prerogative was to issue the money of account and create incentives for its wide circulation and availability in the market. More crucial was the actual stability of the monies, prevent excessive fluctuations, shortages in coin availability during periods of revenue collection and payments. Gathering information from middling revenue officials, military officers, and spies was of utmost concern. Sometime in the early 1700s, Jai Singh II informed the imperial court that during Aurangzeb ʿAlamgir's reign (*ʿahd-i Khuld Manzil*),[390] the *zamindari* of Baswa had been transferred to the *khalisa*. At that time, the rupee weight was fixed at 11.5 *masha*s of silver whereas contemporary revenue officials (*karori*s) were collecting the revenues at an assumed weight of 12 *masha*s from his clerks (*mutasaddi*s).[391] Upon hearing this petition, the concerned officials would be directed to not miscalculate the rates by siphoning off an additional half *masha* of silver for every rupee, or, if the rules had been changed, Jai Singh II would be duly made known that the practice was in accordance with the current order (*zabita*).

From the credit angle, the Mughal State was an entirely different beast; it had only assets and gave credit at any time adding up to tens of millions of rupees! Aurangzeb ʿAlamgir was the premium state-banker and the Mughal State the largest publicly owned banking firm in South Asia that gave fiduciary and non-fiduciary loans to virtually everyone except merchants: *taqavi* loans and agrarian equipment leased to peasants, *mutalaba* and *musaʿadat* credit to officers of all ranks,

[390] In Mughal sources, *Khuld Makan* is the more common variant of Aurangzeb ʿAlamgir's posthumous title.

[391] "Internal copy for chancery archiving of the *ʿarzdasht* sent by Jai Singh II to the imperial court, undated" Doc. no. 56, *Miscellaneous Persian Papers concerning the Maharaja Sahib, undated* (*mutapharrika parasiyana pepara mumalikai Maharaja Sahaba bila tarikha*), Bundle no. 1, Rajasthan State Archives, Bikaner.

and loans to sub-contractors of rural and urban properties and markets. So, the economic logic of Mughal actions in public finance do not resemble any modern public finance theory based on public debt and fiscal deficit. Another caveat is needed. Even with a revenue deficit in a fiscal year (flows), when Aurangzeb ʿAlamgir fought wars, he did not have to bother raising capital for war expenditure on the financial market as European states had become used to. He was financially independent of his subjects making Mughal State's behavior entirely strategic and financially autonomous. The Mughal monetary system was such that no private market for public debt would emerge in South Asia as had appeared in Europe since the 1500s and has now become universal to all nation-states under capitalism.

If there was a steady marginal growth of production in the long run, Mughal State policy stabilized long term prices despite short run and cyclical fluctuations due to war expenditures, large payments, or local coin shortages. While it may sound speculative, there is no reason to believe otherwise since Hanafi monetary thinking we have outlined was made precisely for monetary management keeping in mind price stability, preventing unlawful gain, and an "ethical economy" that was hostile to excessive private accumulation and investment avenues. The Timurids and their allies who ran the Mughal State had centuries of accumulated experience in state building in Central Asia, Iran, and South Asia since at least Timur's times. As we have shown, state authorities and Hanafi jurists deeply thought about money as a social and political reality. They had constructed an extensive chancery infrastructure to record commodity and money exchange prices since they were acutely aware of instabilities that price movements had on the real value of their own payments and their incidence on the peasantry's rent-deducted share in subsistence.

The Timurids used such levers for stabilizing their imperial economy, though as practically oriented state builders, they have left us no treatise on macroeconomic management of fiscal and monetary issues. The reason they have received little attention is the lack of study of this history of juridico-economic concepts and centuries of experiments in macroeconomic management passed down as a state secret, which can be reconstructed from their theoretical texts and practical chancery documents. Mughal monetary and financial practices have been so far studied with no due interest to these Hanafi conceptions found in Arabic legal treatises. Modern debates are artificially disconnected from Hanafi political economy, whose principles had been meticulously translated into Mughal chancery accounting.

There is another dimension of money subsumed within QTM, i.e., credit, to which we shall now turn where Hanafi thought further clarifies the Mughal "system of payments" as an intertemporal adjustment mechanism conducted through paper contracts.

Chapter 6

Settling Debts and Credits with Paper Instruments:

Financial Intermediation and Intertemporal Monetary Adjustments

In this chapter, we analyze the mechanisms of credit, intertemporal transfer of money, and agency. Rather than understand the Mughal State's fiscal sphere as limited to courts and chanceries and the commercial sphere to private financial relations in the major cities, we analyze the legal continuum within which ideas of credit operated in the seventeenth century. Various types of promissory notes (*kaghaz zar*) based on Hanafi law were the primary means of settling payments between agents, be they private or public.

We examine several interconnected financial ideas. We analyze the doctrine of the bill of exchange and the evolution of the "indigenous" instrument, *hundi* through the Hanafi logic of the transfer of debts (*hawala*). Second, we probe the legal liabilities originating from types of intermediation agents carried out. They acted through Hanafi representation (*wakala*/*vakalat*). We illustrate the way private financial settlements were enforced through the police and adjudicated at the judicial courts in Mughal cities. Overall, we argue that the state and the market formed a nexus of mutually coexisting spheres of public life.

From the state perspective, we reconstruct the spatial character of the Mughal Empire's financial portfolio held across its jurisdictions. Rather than fiscal centralization, we argue that decision-making centralization characterized treasury regulations. Examining the way salaries were made, state payments conducted, and different kinds of deductions and exemptions issued, we argue for picturing Mughal fiscality as a legal as much as a financial operation deeply tied to

the larger political economy. This chapter analyzes three types of liability that operated in the Mughal financial world.

Hanafi Concepts of Liability in Mughal State Services

Specie (*naqd*) and coin (*sikka*) taken together are only one element of the monetary system. Money does not exist independent of debt and credit relations. Rather, money is the means to settle intertemporal credit relations by accounting adjustments, deferred payments, transfer of debts (*hawala*), and opening credit channels (*qard*). Through different kinds of deposits, transfers, money substitutes, and financial instruments, credit was the norm for making intertemporal adjustments and accounting settlements in the Mughal Empire. In any discussion of credit, the issue of liability arises. The debtor has various types of responsibility in discharging the money he owes to the creditor who enjoys rights to recover his assets.

The Mughals had no general concept of liability. Hanafi law contains three different concepts that are relevant: fiduciary liability (*daman*), personal responsibility (*dhimma*), and trust (*amana*). Money, wealth, land, or any asset non-perishable by consumption can also be what's in one's responsibility (*dhimma*) in contracts and when one stands surety, the fiduciary relation is an individual's *daman* to another.[392] *Dhimma* is always an individual's responsibility as is fiduciary liability (*daman*); neither of them can be corporate ones as the liability of one person cannot be mixed with that of others. Even though collectively responsible for recovering rents, revenue officials like *karori*s, *mutasaddi*s, and *amin*s were each individually and separately assigned their

[392] Brunschvig, "Corps certain," 304–5.

dhimma.[393] This idea of *dhimma* is still widely known in South Asia languages as *zimma*, *jimma*, *jimmedari*, i.e., having personal responsibility towards discharging one's obligations. On legal responsibility, Muslim jurists have a natural law understanding as Chafik Chehata points out: "every person is endowed with a *dhimma* from the moment of birth."[394] Hence, they enjoy legal capacity (*ahliyya*) to act as legal subjects.[395] A third kind of liability is designated trust (*amana*). Trust pertains to actions an agent performs on behalf of his principal (*asil*), which has no liability for his self.

Since state agents carried on activities on behalf of the Mughal State and controlled most of its resources—lands, revenues, treasuries, these assets were in their possession (*maqbud*). As possessors of properties with state ownership, their liabilities were charted out under different regulations. Or else, they would function arbitrarily and cause loss to the state exchequer.

At the least, five kinds of uses for fiduciary liability (*daman*) existed. Each person in this relation was a surety-holder (*damin*/*zamin*) vis-à-vis the Mughal State:

(1) When intermediaries such as *zamindar*s and *ijaradar*s procured rights to cultivation, they stood surety by paying a small down payment to supervise cultivation. The financial guarantee was legally created as fiduciary liability on state-owned landed assets (*mal*) leased (Hanafi *mal daman*). Colloquially, the right was known as *mal*

[393] Srivastava, *Siyaqnama*, 303.

[394] Chafik Chehata, "Dhimma," in *Encyclopaedia of Islam*, Second Edition, eds., P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs, accessed 2 October 2020 http://dx.doi.org/10.1163/1573-3912_islam_SIM_1824

[395] Baber Johansen, "Sacred and Religious Element in Hanafite Law – Function and Limits of Absolute Character of Government Authority," in *Islam et politique au Maghreb*, ed. Ernest Gellner (Paris: Éditions du Centre national de la recherche scientifique, 1981), 283–9.

zamini—issuing from the legal surety paid for fulfilling the conditions of *mal daman*.

(2) Liability on self (Hanafi *daman fi nafs*): this financial surety (*hazir zaman*) concerned the performance of tasks in lieu of official positions created by the Mughal State.

(3) A small financial surety paid by employees like servants to carry out actions delegated to them. In practice, the Mughal State itself gave them a loan (*qard*) at the time of recruitment as they would have insufficient cash balances. The fiduciary liability paid by surety was also a loan received from the Mughal State.

(4) Guarantee for holding movable properties and wealth such as treasuries, built-up areas considered movable in nature, books at the imperial library, etc. Such fiduciary liability fell on bursars and treasuries.

(5) Personal surety for all those responsible under one's command under the *kafala* system. The guarantor (*kafil*) becomes secondarily liable for the non-performance of the individual working under him who is primarily liable to conduct tasks entrusted to him. Mughal military officers stood surety for their soldiers. The military labor recruitment was regulated through these legal provisions, regulations, and liabilities. This included attendance, absconding, unpaid leaves, and daily appearance of cavalrymen and infantrymen of each *amir*. If they absconded or took leave without due cause, the day's salary would be deducted. High misdemeanor or recurring non-performance led to the termination of the contract.

Financial surety paid and fiduciary liability generated by contracts are hardly straightforward in their logic. Their exploration requires probing the precise steps in framing

contractual rules, legal provisions on different types of contracts the Mughals would combine for them to be operative. Once these elements can be clarified, we can ask how they were collected, recovered, or paid off. These conceptual questions require a clarification in order to make an assessment of the financial side of the Mughal "system of payments" whose monetary side we discussed in the previous chapter. We will analyze the financial aspects of these methods of assigning fiduciary liability within sociological, chancery, and accounting realities.

In Mughal financial negotiations with officers and intermediaries, the crucial concept they always deployed in their contracts was the Islamic legal term, *daman* (fiduciary liability). Sureties are intrinsically linked to money since a deposit had to be made with the Mughal chancery when the agreement was made, and the contract signed. For those who could not offered, the state loaned that amount and deducted it later from their salaries and emoluments. The *FA* classifies *daman* into two types: *mal daman* (financial surety for the possession of goods including land) and *daman fi nafs* or *hadir daman* (personal financial surety for occupying an office or carrying on a task on the employer's behalf).[396] Mughal subcontractors and *zamindar*s paid a surety for controlling state property by making a deposit at the local treasury. What they received as a claim to use the land was called *haqq-i mal zamini* paid by middlemen who stood surety for cultivation in the following crop cycle or lease of farmland and was nothing but an application of this Hanafi legal provision. All officers rendering military and other official services to the state had to pay a surety for *hazir zamini*. When their pay slip (*qabz al-vasul*) was prepared and salaries paid, *hazir zamini* was one of the many deductions made before final payment. Moreover, a financial guarantee had to be

[396] Nizam et al., *FA*, vol. 3, 249. Also see Marghinani, *The Hedaya*, 318. On conceptual difficulties in understanding *daman*, see Chehata, *Études*, vol. 2, 108–15. On the historical context of its use among Muslim polities, see Frede Løkkegaard, *Islamic Taxation in the Classical Period: With Special References to Circumstances in Iraq* (Copenhagen: Branner & Korch, 1950), 92–108; Khaled Abou El Fadl, "Tax Farming in Islamic Law (*qibālah* and *ḍamān* of *kharāj*): A Search for a Concept," *Islamic Studies* 31, no. 1 (1992): 5–32.

issued as a *kafala* for cultivation rights (*mal zamini*) and office rights (*hazir zamini*). These two forms of *daman* are products of Hanafi jurists' thinking and not Mughal fiscal inventions. They were held by officers and rural elite as a bundle with one person responsible with several intermediaries and associates for cultivation.

Fiduciary liability (*daman*) is automatically transferable to the son upon his father's death (*daman al-ibn baʿda mawt al-ab*). Then, it falls upon the son to restore the property under his possession (*daman fulan ʿan walidihi jamiʿ hadha al-mal wa huwa kadha damanan sahihan jaʾizan*).[397] Since *daman* is the liability to return another's property, it transfers to the son upon the father's demise alongside all other dues and debts he may have incurred as they have to be repaid from the inherited wealth. Therefore, when a subcontractor (*mustaʾjir*) who was leasing agrarian cultivation rights died, his son automatically inherited it. Of course, as an individual with legal capacity to contract, he could recuse himself and absolve himself by handing over those rights back in writing to the Mughal State.

Khaled Abou El Fadl has elaborated on the difficulty in ascertaining the precise meaning of *daman* in the fiscality of Muslim States. Moreover, he argues that Mawardi considered *daman* illegal in *kharaj* (land tax). In *kharaj*, land is allodial, and, with it, ownership, possession, and trust belong fully to the peasant. In El Fadl's view, though, the Hanafi *madhhab* had strengthened *daman*'s acceptance through its later legal developments.[398] Hanafi intensification in putting to practice what seems apparently illegal in Mawardi's words may seem paradoxical. Yet, the reason

[397] Nizam et al., *FA*, vol. 6, 381.

[398] El Fadl, "Tax Farming," 19; 22.

the Mughals took recourse to fiduciary liability was straightforward as they leased or subcontracted state land to their peasants in return for a rent.

The peasants paid rent (*ujr* or *ujara* in Rajasthani). Everyone could be asked to stand surety. But who was asked in reality to stand financial surety (*mal zaman*)? Intermediaries like *zamindar*s and *ijaradar*s who held financial surety for their villages or cluster of villages and not the peasants themselves who tilled the lands—the state also granted *taqavi* loans for which local chieftains stood surety. The *zamindar*s paid *mal zaman* at the start of the crop cycle and received their share (*malikana*) later—thereby making them in no way landlords but only intermediaries, who managed cultivation and exercised varying degrees of control over local scenarios. In the case of *ijara*, financial surety (*mal zaman*) was paid as well. The Timurids represent one of the exemplary legal cultures for the study of minute juridico-philosophical reflections on *daman* and its pervasive use for any Muslim empire given the extensive documentary evidence we have for the seventeenth century. These were ways of creating financial obligations and upon the conclusion of the contracts, releasing parties of their liabilities through intertemporal accounting adjustments. Therefore, the three types of liability: fiduciary liability, personal responsibility, and trust pervaded Mughal "system of payments"—agrarian revenue systems were very much part of this game, but for now, we will focus on financial relations alone.

Generating Proof: Treasury Regulations, Bonds, and Fiduciary Liability

Holding somebody else's money is a fiduciary liability; this could be money loaned, given for storage, or pawned. In Timurid statecraft, all its treasury wealth was held not by the Padishah but each individual *tahvildar* (bursar) and *khazanchi* (treasurer) who made payments. The money

had been transferred (*tahvil* being also a *hawala* contract) for safe keeping. They avoided taking risks of releasing funds in ways inconsistent or in violation of imperial regulations (*zabita*) even if they had been received from the imperial court contrary to the approved rules. Exceptions required the Padishah to expressly set aside the regulations or amend them. In 1637, Saiyidi Qambar, the treasurer of Burhanpur prepared a memorandum (*yaddasht*) rejecting the imperial court's order to pay 3100 rupees to Muhammad Zahid. Qambar was asked to pay Zahid a non-deductible salary (Hindavi term, *pura*, i.e., full, which was settled *ala al-hisab* or "on account") when the rules prescribed deductible ones.[399] The reasons for these discrepancies are obvious. Shah Jahan would have agreed to issue a non-deductible income. The imperial chancery had sent off its payment order assuming it would be honored though forgetting to verify if it was consistent with the rules. Qambar noted that "on account of the treasury regulations" (*bi-ʿillat-i zabita-yi khizana*) in vigor, a payment for a non-deductible salary was ruled out.[400] For the *khazanchi*s, such orders posed a problem as they would be liable for implementing faulty orders in case of any investigation. The imperial court's order was subject to imperial regulations (*zavabit*), which were in vigor at the time! Shah Jahan's personal order alone could set aside and make exceptions.

The most common instrument for treasury withdrawals and loans was the *tamassuk*. While both *tamassuk* and *muchalka* have been rendered as "bonds," they had distinct purposes for ascertaining and authenticating proof for two different kinds of liability: the *tamassuk* represented a bond for fiduciary liability (*daman*) whereas the *muchalka* was one for personal responsibility (*dhimma*). The former gave rise to a financial claim whereas the latter the obligation to perform

[399] Salaries were generally subject to deductions made for supplies, horse feed, and other equipment lent by the Mughal State.

[400] "*Yaddasht* dated 8 shaʿban 1047 AH (December 16, 1637)," in Yusuf Khan, *Selected Documents of Shah Jahan's Reign*, 61.

an action. Both bonds generate what jurists call proof (*hujja*) for a claim upon another person's liability, i.e., recognizance.

Any withdrawal of money from the treasury by a third party required the execution of a *tamassuk*, an Arabic term meaning a written commitment or IOU. Mirza Ram Singh borrowed 30,000 rupees from the treasury under the ʿUmdat al-Mulk's charge (*kaghaz-i fath-i khud gumashta-yi ʿUmdat al-Mulk*) for urgent payments to soldiers.[401] The scribe had carefully ended the *tamassuk* saying that this document "serves as proof" (*hujjat bashad*). This is the Persian rendering of the Arabic formula jurists prescribe for loan agreements to possess probative value: *ʿinda al-hujja*. While the *fatawa* laid out the formulaic rules (*shurut*) to produce documents, those templates were constructed in Persian to be "legally valid" (*sahih sharʿi*). If a contract were not written in a legally valid manner, it could be contested but also sent back to the concerned party to rewrite a proper contract complying with legal provisions. Ram Singh's *tamassuk* is still preserved in the Kacchawaha chancery records as the Mughal treasury would have handed over the contract once money withdrawn had been remitted physically or settled in future accounting terms. The reason why few of these would survive is then obvious: upon the successful completion of tasks, the Mughal chancery's *tamassuk* was handed back to the concerned individual, to Ram Singh's *vakil* who sent it back to Amer. The Mughal records would only leave behind the accounting calculation of 3000 rupees deducted for salaries. In order to avoid misuse of the *tamassuk*s, Kacchawaha officials seem to have torn off the portions where Ram Singh's seal appears.

[401] "*Tamassuk* executed by Mirza Ram Singh I dated 24 dhu al-hijja julus 28/1095 AH (November 22, 1684)," Doc. no. 198, *Miscellaneous Persian Papers concerning the Maharaja Sahib* (*mutapharrika Maharaja Sahaba pharasi Jayapura*), Bundle no. 1, Rajasthan State Archives, Bikaner.

Tamassuk could and was executed for other activities leading to fiduciary liability: office rights (*hazir zamini*), pawn (*rahn*), and leasing of agrarian lands. These were all produced through contracts executed in the presence of the *qazi*s.[402] There were different types of making them in the *shurut* parts of *fiqh* texts the jurists called *nawʿ akhar*; they were known to the chanceries as *nauʿ-i digar* or *nauʿi-yi digar* in Persian: variations existed but within the boundaries of what constituted a legally valid document for a contract; these variations we find across the Mughal archive are no contradictions but formulaic rules.[403] The *tamassuk* generated proof for the creditor's right since a treasury withdrawal was nothing but a debt relation. The repayment—more often, an accounting adjustment, led to the dissolution of the contract and the extinction of obligations (*inqidaʾ*).[404]

Richard Grasshoff noted in the late nineteenth century that *tamassuk* exhibits both the meaning of *Forderung* (claim) and *Schuld* (debt),[405] which are closer to the Islamic understanding—a distinction the Mughals made between *talab* (claim) and *qard* (loan) respectively. This distinction translates poorly given the limitations of English legal vocabulary. Lala Tek Chand Bahar (d. 1766) in his monumental Persian lexicon, *Bahar-i ʿajam* differentiates between these two meanings of *tamassuk*: *ma bi-hi al-tamassuk* (that on which a bond exists) and

[402] On *sharh-i tamassukat*, see "Two Short Tracts," MS IO Islamic 2173, British Library, London, 125b–126a. For a template to draft a loan bond (*tamassuk-i qarz*), see Francis Balfour, ed. *The Forms of Herkern* (Calcutta: s.n., 1781), 168.

[403] On *shurut* applicable to different contracts, see Nizam et al., *FA*, vol. 6, 294–442. On different forms, see Srivastava, *Siyaqnama*. On *shurut*, see Wael B. Hallaq, "Model *Shurūṭ* Works and the Dialectic of Doctrine and Practice," *Islamic Law and Society* 2, no. 2 (1995): 109–34.

[404] For a general approach to dissolving contracts, see Muhammad Wohidul Islam, "Dissolution of Contract in Islamic Law," *Arab Law Quarterly* 13, no. 4 (1998): 336–68.

[405] Richard Grasshoff, *Das Wechselrecht der Araber: Eine rechtsvergleichende Studie über die Herkunft des Wechsels* (Berlin: Otto Liebmann, 1899), 67.

ʿinda al-talab (on whom a claim exists).[406] Bahar's perception is steeped within Hanafi legal-philosophical logic.

Another financial instrument existed for the payment of salaries known as the *baraʾa*. The *FA* defines it thus: "the *baraʾa* is for all goods to which a written instrument [of agreement] exists" (*al-baraʾa min kull mal kana bihi sakk*).[407] The *baraʾat* is an old Islamic documentary form that seems to have survived as a testament from the debtor (*lahu dayn*) to the creditor (*ʿalayhi al-dayn*).[408] Joseph Rabino incorrectly claims that the *baraʾat* was unknown in the subcontinent[409] when in fact not only Padishahs and merchants but even palanquin-bearers knew its relevance. The Persian *baraʾat*, the Ottoman *berat*, the Maratha *varat*, the Rajasthani *varata* are different phonetic variants of the Arabic *baraʾa*. The latter was a quittance for the release or discharge of debts known in medieval West Asia and Andalusia.[410] The *FA* seems to imply that the *baraʾat* is a manner of creating a documentary form for making payments leading to the acquittance (*ibraʾ*) of debts and obligations. The *baraʾat* was common among the trading communities too, whose *varata* was an order of payment that settled the bill of exchange. We have at least two examples from the Rajputs:

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[406] Lala Tek Chand Bahar, *Bahar-i ʿajam farhang-i lughat tarkibat kinayat va amsal-i farsi*, ed. Kazim Dizfuliyan, vol. 1 (Tehran: Talaya, 2001), 541.

[407] Nizam et al., *FA*, vol. 6, 420.

[408] Ibidem.

[409] Joseph Rabino, "Banking in Persia: Its Basis, History and Prospects," *Journal of the Institute of Bankers* 13, no. 1 (1892): 51–2.

[410] On early usages in West Asia, see Daaïf Lahcen, "La *barāʾa* : réflexions sur la fonction et l'évolution de la structure de la quittance," *Annales islamologiques* 48, no. 2 (2014): 3–60. On the Maratha use of *varat* in treasury payments, see A. R. Kulkarni, "Money and Banking under the Marathas: Seventeenth Century to AD 1848," in *Money and Credit in Indian History: From Early Medieval Times*, ed. Amiya Kumar Bagchi (New Delhi: Tulika, 2002), 113.

a *varata* drawn in favor or Ambaji Inglis for 200,000 rupees in 1796[411] and another drawn in favor of Shambhu Nath Dikshit for 1300 rupees in 1793.[412]

Often, the Mughals used the *baraʾat* in multiple ways to settle claims and pay salaries. On April 20, 1696, Mahdi Khan met the Padishah at his privy council complaining that his cavalrymen and servants had not received their dues. The scribe writing down the minutes mentions that the Padishah told the chancery officials to write the *baraʾat* at once.[413] In Mughal chancery, it was the norm to formulate the Padishah's words in reported speech as his command without distorting his wording to its letter and spirit. In this case, the Padishah himself mentioned *baraʾat* since he knew its precise function. The Timurid imperial court had to create an agreement (*sakk*) for Mahdi Khan's retinue's *mal* since the Padishah had to absolve himself of the debts to state employees whom he owed money. Once the scribe was done drafting the documents on the prescribed standard paper for the purpose, the *bakhshi* sealed them. Mahdi Khan would present them for the *tahvildar*'s inspection and in no time the *khazanchi* would have released the money.

What did Mughal subjects do when they lost their pay slips, which had to be stored carefully and protected from rain, storm, neglect, and theft? They went to the *qazi* and signed an acknowledgment (*iqrar*) for the preparation of a *baraʾat*. Buddhu, Parasuram, and his colleagues who worked as palanquin-bearers (*kaharan*) for the Rajputs in Mathura found themselves in such

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411 "*Kharita* from Rao Lakshman Rao, Rao Anant Bahadur, and Rao Jagannath Rao Bahadur to Pratap Singh dated caitra sudi 3, 1853 VS (April 10, 1796)," Doc. no. 888, Kapad Dwara Collection.

412 "*Varata* drawn by Gopal Rao and Bakhshi Jivaji to Daulat Ram dated sravana badi 2, 1850 VS (July 25, 1793)," Doc. no. 1346 (1), Kapad Dwara Collection. Doc. no. 1346 (2) preserved with the previous document is Shambhu Nath Dikshit's acquittal of Daulat Ram, acknowledging the receipt of 1300 rupees on kartika badi 5, 1850 VS (October 24, 1793).

413 "*Vaqiʿa* dated 27 ramadan julus 40/1107 AH (April 20, 1696)," Doc. no. 510, *Akhbarat-i darbar-i muʿalla*, Bundle no. 24, Rajasthan State Archives, Bikaner.

a scenario on December 29, 1694.[414] They went to Qazi Hamid's court session in Islamabad (Mathura), who extracted their testimony on how they lost their pay slips and issued them an attestation that was forwarded to Bishan Singh. They made a "legal acknowledgment" (*iʿtiraf sahih sharʿi*) that they had lost pay slips issued by the bursar, Ganga Singh (*az tahvil-i Gang Singh khazanchi*). Qazi Hamid's scribe, Saiyid Ghazanfar concluded that the palanquin-bearers had testified in response (*javab*) to Qazi Hamid's questions on the nature of their lost pay slips and gave the "necessary particulars of the *baraʾat*s" (*tafsil-i baraʾatha*) and noted down their individual details.

The palanquin-bearers collected the dues from the Rajput treasurer who retained this copy for his reference. Knowing that Qazi Hamid had prepared the *iqrar* expressly addressed for Bishan Singh's reference. Bishan Singh himself was nowhere in the picture as he was busy elsewhere. Since the Kacchawaha chancery had to release the money, the document was addressed to the head of the household and employer, as was the norm. This formal quality of Qazi Hamid's address should not be confused for what Bishan Singh did. The Rajput *vakil* appointed to represent Bishan Singh in Mathura would attend the court hearings everyday it was open. Panna Miyan, Bishan Singh's *nazir* (superintendent) for Mathura's *faujdari* would have sent his own *vakil* too. They all acted through representation (*wakala*/*vakalat*) and were witnesses to testify that indeed Buddhu and his friends were who they were, rightfully employed palanquin-bearers. Or else, any impostor who found those pay slips could dress up as a palanquin-bearer and siphon off money. Whether the palanquin-bearers speaking in Hindavi uttered the word *varata* we can never know. However,

[414] "*Iqrar* executed by Buddhu, Parasuram, and other palanquin-bearers in the presence of Qazi Hamid of Islamabad (Mathura) dated 22 jumada al-awwal 1096 AH (December 29, 1694)," Doc. no. 78, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*), Bundle no. 1, Rajasthan State Archives, Bikaner.

its ubiquitous use across royal courts, chanceries, and judicial courts should lead us to conclude that, in one or another form, they were acquainted with rudimentary notions of this contractual form and its logic. When they collected the dues, the actual quittance issued to them was called *citthi*, which became a chit under colonial administration. Daaïf Lahcen explains the disappearance of the *baraʾa* as a quittance in Middle Eastern commercial practices in the early centuries of the second millennium. In vestigial forms, its practice survived across the Mediterranean, the Indian Ocean, and the South Asian worlds.

These legal instruments generate proof for debts, a claim on a third party. These two are intertwined between the debt, the objective, and the claim on the person to recover the debt, the subjective elements. In general parlance, the *tamassuk* and *baraʾat* merely referred to the paper that was cited as proof for financial surety.[415] The jurists and lexicographers, who are attentive to legal definitions and consequences, pay great care to specify these two elements because the non-payment leads to the legal right to recover its value from the concerned party's property. While the Mughal populace may have seen it as their liability, the juristic theory generated legal norms to settle claims.

The centrality of generating proof (*hujjat*) through a financial instrument is noteworthy. In Srinagar, a manuscript called *Dastur al-funun* that survives to this day is attributed to Fani Kashmiri (d. 1670–71) who met Aurangzeb ʿAlamgir during his stay in Kashmir and dedicated the work of political ethics, *Akhlaq-i ʿalam ara*. He lays out the template of such financial instruments as proof (*tamassuk yaʿni hujjat*).[416] The subcontinent's peoples gave their oral

[415] Yasin, *Kitab dastur-i malguzari*, 50.

[416] Fani Kashmiri, attributed, *Dastur al-funun*, MS 1464, Oriental Research Library, Srinagar, f. 3b.

testimony in their dialects and vernaculars. For the sake of probative value, proof, though, had to be recorded in formulaic Persian as the other Hanafi-Gunpowder Empire faced the same problem in Ottoman Turkish.[417] Whether it was the *ʿadalat* and the *mazalim* jurisdiction of the Padishah, or complaints (*shikayat*) and petitions sent to the provincial courts, *qazi*s, *kotwal*s, *faujdar*s, had to extract testimony and proof in vernacular languages, translate, and then attest their veracity in a sworn translation endorsed by competent witnesses with their seals.

Despite having the largest Persian literate communities, by its sheer numbers, the Mughal Empire also had one of the world's largest illiterate populations. Persian was an enabling language of upward mobility for professional castes in public service. Yet, Persian was disabling depending on one's status—the vast majority had no comprehension of it. For Timurid statecraft that was no minor problem to be brushed away though; they had to appear on paper as contractually employed for their work and paid wages (*ajr* in Hanafi terms that became *ajura* in Kacchawaha Rajasthani records). In Timurid public power, even they were entitled to contracts and contractually employed.[418] Their status, religious, ethnic, and caste markers, or even illiteracy were no determining factor as in the eyes of Hanafi law they were free subjects endowed with legal capacity (*ahliyya*) by birth.[419] When employed, they had liability (*daman*) to diligently do their work. Servants' inability to read their contracts written in Persian was not a minor problem. Their *hujjat* was generated by court officials who could validate the contracting process by their testimony

[417] On difficulties in generating proof (*hüccet*) in the Ottoman context, see Gilles Veinstein, "L'oralité dans les documents d'archives ottomans : paroles rapportées ou imaginées ?," *Revue du Monde Musulman et de la Méditerranée* 75-76 (1996): 133–42.

[418] Only one person was not contractually employed as contracts were made in his name: the Padishah since he was nobody's employee though he too had an unwritten contract with the subjects (*riʿaya*).

[419] Slaves have limited legal capacity.

(*gavah*). Especially, for the thousands of servants, *tamassukat-i zamini-yi ahl-i khidmat* (surety bond for fiduciary liability of menial servants) and *muchalkat-i zamini-yi ahl-i khidmat* (personal bond for personal liability of menial servants) were produced to contractually employ them.[420] The Mughal State had a legal liability to generate proof for contracting to be legal in all its dimensions, for the contracting party to have a proof of appointment as well as for its chancery to do accounting. The subaltern's speech was represented by state agents in legally conforming language. The subaltern spoke and had to speak—his or her oral testimony was the basic element of Hanafi contracts without which contracting could not happen; the state formulated his or her language into its legalese. In the Mughal Empire, the state agents *as* deputies of public power represented their speech giving probative value to documents.

In any given year, hundreds of thousands of *tamassukat* were prepared at all levels of the state apparatus for *qarz* (loans), *mal zaman* (asset surety), *hazir zaman* (personal surety), *iqrar* (agreement), *razi* (acquittance). When loans were repaid at the end of the fiscal cycle, they were calculated as accounting deductions (*hashv-minha*) and not as a real deposit of money. The *tamassuk* was handed over to the concerned party, destroyed, or its paper recycled since the financial payment for fiduciary liability had been recovered and the claim against the concerned party extinguished once the contractual period ended. Or, if the property held had been

[420] See *Zavabit-i ʿalamgiri*, f. 20b. Thousands of different types of *tamassukat* survive in the Mughal military records in Hyderabad, Kacchawaha chancery records in Bikaner, and the ʿInayat Jung Collection at the National Archives in New Delhi, which require a comparative analysis. A small portion of these sources have been mined for data. However, the procedural nature of the Mughal administrative apparatus as different accounts moved from the local to the *suba* and then the imperial court upwards and downwards, requires a correlation between contracts, documents, abstracts, ledger books by following the accounting and legal logic in place. Our point is that Mughal data cannot be interpreted outside its logic. Moreover, other interesting questions can be probed from documents such as *tamassukat* when they concerned employment. Did the wages of menial servants increase, decrease, or stagnate? What were the difficulties in making payments on time or changes to salary deduction rates from the mid-seventeenth to the mid-eighteenth centuries? These issues might seem negligible compared to the larger losses to elite incomes, but did the so-called decline lead to the retrenchment of menial servants as part of cost cutting measures?

mismanaged, dues would be recovered, and such persons no longer asked to subcontract for unsatisfactory performance. The dissolution of the contract concluded the process with respect to the party involved; however, these processes were continuous and recurring as payments and receipts were done every day throughout the empire. In their habit formations in social intercourse, Mughal subjects' legal thinking and practice were co-constituted by these Hanafi legal practices of recognizance for fiduciary liability.

In Hanafi law, *daman*/*zaman* is a recognizance of fiduciary liability. In English common law, recognizance is the practice of signing a bail bond promising to appear before a court of law for the release from a civil or a criminal proceeding. In the late eighteenth and early nineteenth centuries, the EIC rehashed *hazir zamini* as a model for preparing a recognizance for colonial subjects appearing before the British courts in Bengal.[421] Since everyone knew *zamanat*/*damana* as fiduciary liability, *hazir zamini*, the surety bond, was transplanted as a surrogate for a common-law recognizance of the bail bond, which is why in most regional languages, bail bond, financial surety, and sponsorship are called *jamana*, *jaminu*, *jamin*, *zamanat*, or *jamanattu*, reflecting its origins ultimately in Hanafi law. However, colloquial usages today are consistent with common law as Hanafi law has not been in vigor. Yet, traces of the precolonial past remain in the postcolonial present. This hybrid legal solution was a strange form of legal transplant. Seldom do we think of legal transplants as happening within a legal system, and, often as ways of introducing an alien legal provision to another place. The irony of EIC rule though was that the ubiquitously known Hanafi legal instrument became a legal transplant within erstwhile Mughal territories—

[421] Charles Stewart, *Original Persian Letters and Other Documents, with Fac-similes* (London: Kingsburg, Parbury, Allen, and Co., 1825), 30–3.

precisely because it was ubiquitous and intelligible to everyone—by being grafted to fulfill norms of common-law procedures.[422]

Discharging the transfer of obligations:

The entangled histories of *hundi* and *hawala*

When it comes to concepts of credit operations, acknowledgment of debts, and their settlement, for money proper for the discharge of debts a legal continuum exists between the Mediterranean and the Indian Ocean worlds deep into the hinterlands of Central and South Asia. In comparative legal histories, the Mediterranean world remains the center of analysis, whether that be European or Islamic credit instruments and banking.[423] Within the subcontinent, the prevalence of the *hundi* under Islamicate rule satisfied similar needs for *suftaja* (bill of exchange) as an instrument for *hawala* (transfer of debts). Handled by private merchant-bankers and financiers, they formed the major channels for imperial elite officers to make deposits through their *vakil*s at Mughal treasuries in return for benefices, officer rights, and other contracts. The Mughal State created the need for a larger velocity of *hundi* transactions.[424] This was a one-way transaction where the state made payments in ready cash from its treasuries kept across its realms

[422] See Alan Watson, *Legal Transplants: An Approach to Comparative Law* (Charlottesville: University Press of Virginia, 1974).

[423] For a comparative legal history of payment systems, see Benjamin Geva, *The Payment Order of Antiquity and the Middle Ages: A Legal History* (Oxford/Portland: Hart, 2011).

[424] On a critique of the "missing merchant," see Subrahmanyam, "The Mughal State," 314–6. Further in this chapter, I will expand on the relation between the market and the State, that is, merchant-banker networks and state agents.

or as frequently happened, accounting adjustments across fiscal cycles. *Hundi* was the instrument or bill of exchange used for a specific sub-provision within *hawala* transactions: *suftaja*.

A *hawala* transaction involves the transfer of debt from the principal to another person to make the payments on the principal's behalf. *Hundi* or its Sanskrit equivalent *hundika* (*undigai*/*undige*/*hundi* in South Indian languages)[425] most likely pre-existed Muslim rule as a form of deposit or a promissory note, which had been gradually converted into a paper instrument for the purposes of *hawala*. In the *FA*, it is "the transfer of obligation from [one's] responsibility to [another's] responsibility" (*huwa naql al-dayn min dhimma ila dhimma*).[426] Moreover, few pre-Islamic textual references are available for the *hundika*. All three verses in Kalhana's *Rajatarangini* to *hundikadhana*, *hundikadana*, and *hundikadeya* (giving of a *hundika*) refer to a pay slip. *Hundika* was a promissory note Kashmir kings issued to soldiers (*tantrin*) in lieu of coin they could not pay due to lack of money in the treasury.[427] In the *Lekhapaddhati* too, the *rajahundika* (royal draft) is a payment order issued to the local feudatory to pay soldiers' salaries.[428] These two examples show that the *hundika* was likely a royal mandate and not a commercial bill of exchange. Other than these two references, *hundi* hardly appears as a bill of

[425] Even today, donation boxes in South Indian temples are called by these terms and receive large quantities of money. Given the prominence of temples in the medieval political economy of South India, it is likely temple treasuries also acted as centers to deposit wealth, transfer money, and make payments to States. On the donor system in South Indian temples, see Burton Stein, "The Economic Function of a Medieval South Indian Temple," *The Journal of Asian Studies* 19, no. 2 (1960): 163–76.

[426] Nizam et al., *FA*, vol. 3, 285.

[427] See Kalhana, *Kalhaṇa Râjataraṅgiṇī or Chronicle of the Kings of Kashmir*, ed. M. A. Stein (Bombay: Government Central Book Depot, 1892), V. 266; 275; 302. Marc Stein notes that *dinnarojjamacirika* (bond of cash debt) and *dhanyojjamacirika* (bond of grain debt) also existed. Marc Aurel Stein, *Notes on the Ancient Monetary System of Kaśmīr* (London: s.n., 1899), 13.

[428] Benoytosh Bhattacharyya, ed. *Lekhapaddhati* (Baroda: Central Library, 1925), 10–11; Pushpa Prasad, ed. *Lekhapaddhati: Documents of State and Everyday Life from Ancient and Early Medieval Gujarat, 9th to15th Centuries* (New Delhi: Oxford University Press, 2007), 75.

exchange without being already set in Islamicate political contexts (curiously enough, it is conspicuously absent in states like the Vijayanagara).

The *hundika* had come a long way from the Indic deposit to what Ksemendra in mid-seventeenth century Kashmir described in his *Lokaprakasa* as "money deposit, grain deposit, barley and wheat deposit… such is the doctrine of the deposit" (*dinarahundika dhanyahundika yavagodhumahundika…iti hundikamatam*).[429] *Lokaprakasa* is a hybrid text that reflects contemporary seventeenth-century conditions of Kashmir rather than its pre-Islamic past. In its first modern edition in the late nineteenth century, Albrecht Weber contended that the *Lokaprakasa* exhibited a deep integration of what he considered "Muslim chancery style insertion" (*moslemische Curial-Styl-Einschub*).[430] The documentary forms of different kinds of bills of exchange, promissory notes, and legal deeds discussed in *Lokaprakasa*'s second chapter unequivocally mention the Timurid Padishahs, *Sahilsalema* (Jahangir as Salim) and *mahaprabhu suratrana Sahijjyahana* (The Great Lord Sultan Shah Jahan).[431] They attest to an addition made to a pre-existing work attributed to an earlier Ksemendra whose existence is uncertain. The latter Ksemendra drafts a *hundika* template with a geographical route of its mobility: *sribahilahorantare jyahanabadake agarantare* (Much outside auspicious Lahore, beyond Agra, in Shahjahanabad). If it were extracted from a real bill of exchange made in Srinagar, that was the normal path it took to

[429] Ksemendra, *Lokaprakasha*, ed. Jagaddhar Zadoo Shastri (Srinagar: Research Department, 1947), 13. Jules Bloch, *Un manuel du scribe cachemirien an XVIIe siècle : Le Lokaprakāça attribué à Kṣemendra* (Paris : P. Geuthner, 1914).

[430] Albrecht Weber, "Zu Kshemendra's Lokaprakâça," in *Indische Studien: Beiträge für die Kunde des indischen Alterthums*, vol. 18 (Leipzig: F. A. Brockhaus, 1898), 305.

[431] As scholarly consensus stands today, only one manuscript copy contains the second chapter on documentary forms set in the Mughal world. See *Lokaprakāśa by Kṣemendra, with a Commentary by Sahaja Bhaṭṭa*, ed. Michael Witzel, vol. 1 (Cambridge, Massachusetts: Harvard University Press, 2018), 8. Also see Lallanji Gopal, "Stratification in the *Lokaprakāśa*," *Annals of the Bhandarkar Oriental Research Institute* 72-73, nos. 1-4 (1991): 501–8.

reach the Mughal capital.[432] Ksemendra's *hundika* could hardly be real, or, at best, a formulaic one, as merchant communities did not send bills of exchange in Sanskrit, the "language of the Gods." The templates are a textual creation within the world of the Mughal *hundi* and its conventional usages. Giving guidance to the payer, Ksemendra suggests that one perform *salam bandagi* upon reaching the drawee (*amukena salama bandagi karaneyam*). Showing a keen interest in the country's and the state's affairs (*desasamacaram rajyasamacaram srestham sthitam*) is essential knowledge for merchant-bankers making agreements (*kararam* from *iqrar*).[433] Ksemendra's template represents a *mudaraba* contract (*jokhami hundi*) on the sale of goods in a future date against down payment (*etat vastubhavam vikriritva sauda* [*sauda*] *krte*). Many of these templates are composed as happening during Shah Jahan's reign (*paramadi daivatarcaniyata paramabhattaraka maharajadhiraja cakravartyuttama lokapala srimat Sahijyahana vijayarajye*).

While *hundi* was a term unique to the region, in reality, the transaction was a *hawala* operation, placing it within the Islamic transregional legal continuum. In the case of *hawala* transactions, the Mughal State was in a unique position vis-à-vis all its subjects. They made deposits of money to the chanceries by drawing on *hawala* transactions. The most popular types of *hundi*s conform to distinctions Hanafi jurists make. The *jokhami hundi*, though still called a *hundi*, was not strictly speaking a bill of exchange. Instead, the *jokhami hundi* satisfied the needs of a *commenda* contract for the sale of goods. The *jokhami hundi* acted as a partnership (*mudaraba*) agreement between an investor and a partner that were lucrative for commodity and textile trade. The *muddati hundi* sometimes also known as *miʿadi hundi*, concluded for a fixed time period is

[432] Ksemendra, *Lokaprakasha*, 31.

[433] Ibid., 32. He adds that all documents must be dated (*samvatsaratithivaram likhaniyam*).

akin to a *hawala muqaiyada* (restricted). The restriction applies to the fact that money is drawn from the deposit the transferor has already made to the drawer. The *darshani hundi*, paid on sight resembles a *hawala mutlaqa* (absolute or unrestricted). Hanafi jurists stipulate that *hawala* transactions are non-negotiable in nature—both assignment and novation are explicitly rendered impossible.[434] Customarily, merchant-bankers seem to have innovated forms such as the *shahjog hundi* that were assignable to a third party.

The *hundi* has been subject to wide-ranging debate on its nature as a bill of exchange, interest rates, and types of transfers allowed in the precolonial period.[435] For Tek Chand Bahar, "this is the custom of Hindustan and the Hindi term" (*in rasm-i Hindustan va lafz-i hindi ast*) that was nothing other than the *suftaja*: "this is called *sufta* in Persian and its Arabicized form is *suftaj*" (*an ra bi-farsi sufta guyand va suftaj maʿrib-i an ast*).[436] Bahar also provides a broader scope for what was known as a *hundi* in the terminology of Hindustan's merchant-bankers (*istlilah-i sarrafan-i Hindustan*), which ultimately represents a kind of *kaghaz zar* (cash draft).[437] Bahar's *kaghaz zar* has an expansive meaning going far beyond a bill of exchange. In his situated experience within Mughal commercial realities, all paper instruments made as promissory notes for future settlement of transactions are cash drafts.[438]

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[434] Nicholas H. D. Foster, "Owing and Owning in Islamic and Western Law," *Yearbook of Islamic and Middle Eastern Law* 10 (2003-2004): 86

[435] See Subrahmanyam, "Introduction," 32–5.

[436] Bahar, *Bahar-i ʿajam*, vol. 3, 2140. Translation partly cited in Irfan Habib, "System of Bills of Exchange (Hundis) in the Mughal Empire," *Proceedings of the Indian History Congress* 33 (1971): 301.

[437] Bahar, *Bahar-i ʿajam*, vol. 3, 1663.

[438] An appointment letter (*talab*) to an office is a *kaghaz zar* too producing the right to recover salaries.

The *hundi* is a hybrid instrument: an Indic deposit, which had been gradually transformed into the paper (*suftaja*) meant for *hawala* transactions in general, which itself had been further expanded through usage by *bania* communities. *Suftaja*, is a special form of *hawala* that Marghinani considers reprehensible but not forbidden, arguing that the use of a third party to transport wealth over long distances constitutes unlawful gain (*riba*).[439] *Suftaja* was widely known in the Mediterranean world too, where the *sarf* operation was done by merchant-bankers.[440] Richard Grasshoff's early assessment that *suftaja* was the paper on which a *hawala* was carried out, or a subset of a *hawala* operation, comes closest to Marghinani's assessment.[441]

The *hawala* transaction was deeply linked to the payments systems of the Muslim States and their needs to transfer money. Hence, Rajputs and their merchant-bankers were used to calling *hundi* transfers as a consignment of a debt in vernacular speech (*havala diyo* or *havala liyo*). The payer (*muhil*) could take recourse to a *hundi* for both for contracts of *muʿayana* (monetary transaction)[442] as well as a *mudayana* (credit transaction). In the former, money was deposited with the drawer whereas in the latter, an advance draft had been procured and settled later by accounting or money deposit.

[439] Marghinani, *The Hedaya*, 333–4.

[440] Shelemo Dov Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza*, vol. 1 (Berkeley: University of California Press, 1999), 242–6. Also see Abraham L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970); Murat Çizakça, *A Comparative Evolution of Business Partnerships, the Islamic World and Europe with special reference to the Ottoman Archives* (Leiden: Brill, 1996).

[441] Grasshoff, *Das Wechselrecht*, 62–5.

[442] Khan, *Mirʾat-i ahmadi*, 411.

In the early colonial period, the *hundi* was brought closer to English common-law doctrine of bills of exchange,[443] whose expansive scope for novation and assignment allowed for greater litigation. Common law provisions were put into effect for the endorsement of bills of exchange by 1845.[444] Hanafi law did not permit or highly restricted these possibilities. Novation refers to the substitution of a new contract for an older one and assignment, changes made to names of debtors or creditors. Assignment and novation are solutions to modify contracts when it becomes impossible to honor previously agreed contractual terms to dissolve obligations. In Hanafi law, a new contract was drawn up when one could not guarantee the enforcement of the older one rather than make amends within it. Since European legal systems allowed such minor changes to be incorporated within them: the potential for litigation was higher depending on whether and how a substitution had been made, whether it had been procedurally accurate, or whether coercion had been involved to alter the contract. Such complications arose under colonial administration that expanded the doctrine of bills of exchange, which were essential for the EIC's revenue remittances. In 1832, Prawnnath Chowdree filed a case against the Jessore collector and Sullemoollah Chowdree for defaulting on a *hundi* meant for land rent (*malguzari*) payment. The *Sadr diwani adalat* too made the distinction between the instrument (*hundi*) and the transfer of obligation (*hawala*) while adjudicating the case: "the remainder on the hoondee and the balance due on the howalutnamah or obligation."[445] Here too, the *maulvi*s as experts of Hanafi law sat on the board

[443] See *Indian Contract Act 1872*, Chapter VIII "Of Indemnity and Guarantee" and *Negotiable Instruments Act 1881*, Chapter II, "Of Notes, Bills, and Cheques."

[444] William Macpherson, *Outlines of the Law of Contracts, as Administered in the Courts of British India, not Established by Royal Charter* (London: R. C. Lepage, 1864), 99–100.

[445] For a few examples, see "Sullemoollah Chowdree, Appellant vs. Prawnnath Chowdree, Respondent, September 18, 1843," in *Reports of Cases Determined in the Court of Sudder Dewanny Adawlut with an Index to the Principal Matters*, vol. 7, Containing the Reports from 1841 to 1848 (Bhowanipore: Sreenauth Banerjee and Brothers, 1875),

advising British judges and would have composed their *fatwa*s on the *hawala* legal component of the *hundi* paper instrument accordingly.[446]

Today, *hundi* is often perceived as an "indigenous" bill of exchange given its name. As both British-era Hanafi views as much as Islamicate legal culture reveal, the *hundi* is an indigenous name for the settlement of payments through the transfer of debts under *hawala*. This means of long-distance payment was an integral feature of Muslim state fiscality. Mughal military officers, irrespective of where they were stationed, deposited sureties for benefices and fees for officer rights (*hazir zamini*) at the imperial court. Unlike land revenue that was earmarked for regionalized needs, the centralization of these payments concentrated cash balances for direct expenditures of the imperial court. The *hundi*'s function as a *suftaja* for *hawala* contracts is further strengthened by the fact that its encashment was legally enforceable by Mughal police and judicial courts as per Hanafi law as we will see below. Appreciating this historical trajectory of the *hundi* under Islamicate rule leads us to turn to the Hanafi notion of agency (*amana*/*amanat*) in representation, decision-making, and transfer of money and assets on behalf of a third party.

157. For another case, see "Gourchunder, Appellant vs. Hoolassee Shah Respondent, April 27, 1847," in ibid., 573–81.

[446] The legal transformation in general under the EIC and the formation of "Anglo-Mohammedan law" in particular have received scholarly attention. The persistence of Hanafi law in ordinary life under colonial rule remains relatively underappreciated.

The Institution of Representation (*vakalat*):

Agents operating under Trust

In Hanafi law, *wakala*/*vakalat* designates the representation of the principal by an agent who undertakes contractual obligations. *Vakil*s conducted business for princes, *amir*s, *mansabdar*s, *zamindar*s, and the Mughal State itself at the imperial court as much as they represented *subadar*s and *faujdar*s in various cities and attended daily proceedings of judicial courts. The *vakil* has the liability of trust (*amana*) and not fiduciary liability (*daman*) while taking possession (*qabd*) of properties, goods, carrying out *hawala* transactions, getting emoluments and salaries endorsed on his principal's (*asil*) behalf.[447] The *vakil*'s representation (*niyaba*) is, as the *FA* says, non-fiduciary in nature: "the possessed in the *vakil*'s hand is trust" (*al-maqbud fi yad al-wakil amana*) contrasted by "possession for oneself" which "is possession of fiduciary liability" (*al-qabd li-nafisihi qabd daman*).[448] The Ottoman *Mecelle* puts it more crisply that in relations of trust, the representative is not liable in fiduciary terms (*ghayr madmuna*).[449] Trust is the basis of intermediation, where the contract has no legal effect on the representative who acts as the agent of the principal. Trust relations touched upon the sensitive principal-agent problem in the Mughal Empire as we will see below.

At the imperial court, the Rajput *vakil-i darbar-i muʿalla* like Jag Jivan Das and Kesho Das who were appointed, dismissed, and reappointed several times conducted Rajput affairs. Each

[447] Representatives or agents of the principal (*asil*) such as *vakil*, *gumashta*, *dalal*, and *arhatia*, functioned on the basis of trust (*amana*).

[448] Nizam et al., *FA*, vol. 6, 477.

[449] See *Mecelle*, Art. 768. Also see Foster, "The Islamic Law of Real security," *Arab Law Quarterly* 15, no. 2 (2000): 146.

appointment required a formal request from the Kacchawaha princes and its acceptance by Aurangzeb ʿAlamgir. Sometime in the 1690s, Khushhal Chand from the Mughal imperial chancery sent a letter to Bishan Singh that Jag Jivan Das had been appointed.[450] A decade later, an anonymous high officer of the imperial chancery sent a letter in the name of the *Khidev-i kayhan* (World Possessor) to Bishan Singh, the *muvakkil* (appointer who delegated agency) to reappoint Jag Jivan Das as his *vakil* due to Kesho Rai's demise.[451] As the jurists say, under the *vakalat* contract, the individual would not appear in person (*aslatan*) but through an agent (*wakalatan*).[452] Very often, the *vakil* was removed (*maʿzul*) for misdemeanor and a new one appointed (*mansub*) for which clear procedures existed including the fact that the previous *vakil*'s actions could still have legal effect after his removal.[453]

What happens in this case of transition from one person occupying the position of another? Do the accounts kept by the individual get automatically transferred to the new one? Under normal circumstances, the appointer has access to the accounts of his agent. A trusted servant, whom the

[450] "Persian letter from Khushhal Chand to Bishan Singh, undated," Doc. no. 968, *Khatuta maharajagana*, Bundle no. 3, Rajasthan State Archives, Bikaner.

[451] "Anonymous Persian letter to Jai Singh II dated 21 shawwal julus 49 (February 5, 1705)," Doc. no. 1068, *Khatuta maharajagana*, Bundle no. 3, Rajasthan State Archives, Bikaner. The letter's author is unidentifiable as the envelope (*kharita*) cover slip containing the sender's name and seal is missing. Certainly, the author would be a high officer of the imperial chancery, who alone could communicate the decision on Bishan Singh's representation (*wakala*) to the imperial court. Whoever, it was, several problems for understanding Timurid decision-making emerge. Since the *wakala* was a contract between Aurangzeb ʿAlamgir and Jai Singh II, the Padishah had a say on who would represent the other party, Jai Singh II. However, who was responsible for forwarding the Rajput request, and who was empowered to communicate this imperial decision? Independently, the Rajput *vakil*s updated the Kacchawaha prince and the Amer chancery but one had to wait to receive the imperial order for its contractual confirmation, and to take charge upon presenting proof. The fact that the author writes in the name of the "World Possessor" is the formalistic expression of his authority as being ultimately one of acting upon the Padishah's command. However, this formalism is a device to display power, which is not the same as who in the chancery was authorized to and took the relevant decision; the officer authorized to communicate could be yet another.

[452] To this day, an advocate as a pleader is called *vakil* in most South Asian languages. In some languages like Bengali, their client is called *makkela* from the Arabo-Persian *muvakkil*.

[453] On different reasons for the revocation of agency, see Nizam et al., *FA*, vol. 3, 584–5.

Padishah held in high esteem for his impeccable services, Mirza Yar ʿAli Beg was *darugha-yi dak* (Superintendent of the Postal Services) and *darugha-yi kachehri* (Superintendent of the Offices) in the later decades of the reign. In 1697, Yar ʿAli Beg sent a letter to Bishan Singh explaining the reasons why he could not access the previous *vakil*'s accounts.[454] Of course, Bishan Singh had the right as Yar ʿAli Beg made it clear. Yet, he refused Bishan Singh's request to see the accounts (*muʿamala-yi hisab*) informing him that he had concluded an agreement and put the matter to the end through an amicable settlement (*haqiqat-i sulh*). Kesho Rai's accounts contained evidence for various underhand dealings of imperial courtiers and opening them would have meant washing every-one's dirty linen in the Padishah's presence. If Bishan Singh wished to still pursue the matter, Yar ʿAli Beg said in no uncertain terms that the issue had to be settled at the "most glorious court" (*aʿza darbar*). A few years earlier, Kesho Rai had been found guilty of paying bribes to imperial officials as well as swindling Rajput money to the point that he had even contracted enormous debts with Aurangabad *mahajan*s that they had to ultimately pay off. Not that the Rajputs were liable for Kesho Rai's behavior, though, as employers, they did not want a bad reputation in the money markets.

Moreover, when it came to legal matters requiring juristic knowledge, non-Muslim elites recruited qualified Muslim scholars as their *vakil-i sharʿi*. In 1694, the Rajputs were looking for someone to challenge Qazi Muhammad Wali's decision at the imperial court. Agra's Qazi Wali had adjudicated in favor of Rasulpur's weavers who had brought a suit against Rajput illegal land encroachment (more on this matter in the next chapter). Panna Miyan, Bishan Singh's superintendent in Mathura consulted the city's Qazi Hamid to find him a suitable *vakil-i sharʿi*.

[454] "Persian letter from Mirza Yar ʿAli Beg to Bishan Singh dated julus 41 (1697–98)," Doc. no. 956, *Khatuta maharajagana*, Bundle no. 3, Rajasthan State Archives, Bikaner.

Qazi Wali and Qazi Hamid were good friends who met often and seem to have had kinship ties. Now, Qazi Hamid had no problem that Bishan Singh would challenge his friend, Qazi Wali's (the *qazi* as the *naʾib* or deputy of the *imam* of that same Muslim State) decision directly with the *imam* of that very Muslim State.

Qazi Hamid sent a letter of recommendation (*sifarish*) to Bishan Singh suggesting he might take his scribe (*katib*), Saiyid Ghazanfar who had excellent skills in *fiqh* and drafting legal deeds and documents as his appointee.[455] The matter worked (not the appeal to the legal case though as we will see later) and Saiyid Ghazanfar travelled south to Aurangabad. At least, these legal problems meant upward mobility from being *katib* at the judicial court to being *vakil-i sharʿi* of an *amir* at the imperial court. It would have hardly mattered to Ghazanfar that he was representing the *dhimmi*'s interests since he was lawfully representing a *dhimmi*, that too an *amir* of the Muslim State in the Muslim State under its own promise to guarantee the rights of "protected communities." In a memorandum (*yaddasht*) the imperial court sent a year later in 1695 to the Rajputs, Saiyid Ghazanfar was found satisfactorily discharging his duties (*vakil-i sharʿi-yi ʿadalat-i ʿaliyya*).[456]

[455] "Persian letter from Qazi Hamid to Bishan Singh," Doc. no. 458, *Khatuta maharajagana*, Bundle no. 1, Rajasthan State Archives, Bikaner. In the Mughal Empire, letters of recommendation (*sifarish*), especially, if they came from high-ranking elites, officers, and judges were given careful scrutiny and were powerful sources of upward mobility. Recommendations could take someone high up the ladder from being a scribe at any judicial court—Mathura was an important one, no doubt—jumping all layers, finding oneself jostling right next to grandees of the imperial court. The study of Mughal *sifarish* and its effects requires an article-length analysis beyond the scope of our present study. Moreover, calligraphy was a specialized skill requiring the knowledge of the discipline in question, be that poetry, history, or jurisprudence. Scribes trained in those respective fields were employed. I thank Francis Richard for suggesting to me this relation between calligraphic training and specialization in the field of knowledge that went hand in hand.

[456] "*Yaddasht* from the imperial court to Bishan Singh dated julus 39 (1695)," Doc. no. 163, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*), Bundle no. 1, Rajasthan State Archives, Bikaner.

It is often assumed that Mughal State agents, in particular, judges as representatives of Islamic legal institutions colluded with "Muslim interest." Qazi Hamid knew the Rajput *amir* throughout his years working in Mathura. He made arrangements for Bishan Singh's mother who came annually for ritual bathing at the Yamuna but also requested the Rajput superintendent, Panna Miyan for military escort when his family travelled to Delhi. Judges showed high professionalism. Giving advice and facilitating legal redress was the norm—religion was no barrier. Qazi Hamid had little reason to display affective sentiments of "communal" behavior as *qazi*s are thought to have embodied. Moreover, Qazi Hamid knew that for the *imam* legal business was a serious matter and he would not hastily decide on any appeal at his judicial court (*ʿadalat-i ʿaliyya*) stationed in the Deccan at the time to which extraordinary jurisdiction was reserved. On this matter, despite negative portrayals, historiography has been consistent on how seriously Aurangzeb ʿAlamgir took his work as much as the law he was expected to abide by. What burdened the *imam*'s mind, more than anything else was that if he, of all persons in this empire, violated the law, he was going to trample upon his subjects' rights. They would have no recourse to a higher jurisdiction as a court of appeal except blame their fate and beg their gods and saints for intercession, which would come to naught if Timurid public power itself did not respect their legitimate claims.

Getting back to the ordinary *vakil*s, at least, the Rajput ones, kept very low cash reserves of barely a few hundred rupees, which ensured Amer had enough control over possible embezzlement in Aurangabad. Since the *hundi* premiums varied based on distance and volume of transfers, Amer regularly received discount rate lists (*nirakha hundavana*). Consulting these lists, Amer chancery officials tried making efficient choices to limit paying exorbitant discount and brokerage fees. Very often, Amer sent *hundi*s for larger sums to its *vakil*s, clubbing together the

amounts needed for settling various debts, salaries, and payments that became due in close time intervals.

The Kacchawahas made cash deposits at the imperial court through *suftaja*/*hundi*. According to Hanafi law on *hawala*, Bishan Singh was the payer (*muhtal*) who transferred money to his *vakil*, the payee (*muhil*). Pancholi Jag Jivan Das was Bishan Singh's agent holding trust (*amana*) in relation to him as his principal (*asil*). He was not a separate legal person with fiduciary liability in the transaction as he acted *as* no more than Bishan Singh's agent with power of attorney. Amer's *mahajan* was the drawer and his agent (*arhsatta*) or an independent banker (*dukan*) was the drawee who paid Bishan Singh's *vakil* in Aurangabad. The drawer and the drawee were the ones who took the responsibility to make the transfer and hence became the transferers (*muhtal ʿalayhi*). An advance draft was procured at times. In this transaction, two legal operations of Hanafi law are in place: *wakala* and *hawala* via *suftaja*. Fiduciary liability (*daman*) lay on Bishan Singh. The Rajput chancery, which paid the merchant-banker in Amer transferred it to him by making the deposit. He profited by a margin of discount due to the presence of the Mughal State: the larger the size and frequency of these deposits, sureties, and payments at the Mughal court and its provinces, the rate of circulation of *hundi*s and the profits would also be higher. From the 1680s when the imperial court moved to Aurangabad, the city increasingly became a center for attracting more of these bills of exchange.

In the Mughal Empire, other kinds of agency existed in the commercial sphere too. Assistants to traders and middling officials were called *dalal, arhatia* and *gumashta* by custom. Bahar defines a *gumashta* as *pas janishin*: "the person who occupies the place of the firm's owner once he has left and he is customarily called *gumashta*" (*shakhsi ki baʿd az barkhastan-i sahib-i*

dukan bar ja-yi u nashinad va an ra bi-ʿurf gumashta guyand).[457] These types of commercial agents (terms still used for brokers today) worked under Hanafi practices of trust (*amana*).[458] In a Mughal judicial court, none of them had fiduciary liability on their person while acting in good faith on behalf of their principal. If they were acting in good faith on their principal's bad faith, the fiduciary liability was solely the principal's. Rajput *vakil*s were fond of calling bankruptcy *dukana utha gai* (the firm has gone bankrupt) whereas when the agent was available but not his merchant-banker to encash the *hundi*, they reported: *arata thi dukana thi nahi* (agent was available, but the firm was shut). How did Pancholi Jag Jivan Das convey his frustrations to Jai Singh II, though he could not openly vent them to his master?

> *Dhanesura Gujarati ki dukana para rupa doya hajara panca se ki hudi ai thi su vaiki athai arata thi dukana thi nahi su ji sarapha* [*sarraf*] *ke arata thi vaiki dukana utha gai su umedavara* [*umidvar*] *hu ji ora sahukara matabara* [*muʿtabar*] *ki hudi inayata* [*ʿinayat*] *hoya ji*.[459]
>
> A *hundi* worth two thousand and five rupees to be encashed at Dhanesur Gujarati's firm (the endorsee) had reached. Here, while the agent was to be seen, the firm was shut. The *sarraf*'s

[457] Bahar, *Bahar-i ʿajam*, vol. 1, 419. On other Hindavi terms in Bahar's lexicon, see Ashfaque Ali, "Hindi Commercial and Craft Terms in Persian Lexicon, the *Bahar-i 'Ajam*," *Proceedings of the Indian History Congress* 63 (2002): 378–82.

[458] On the nineteenth century, see Ray, "Asian Capital," 494.

[459] "Rajasthani *vakil* report from Pancholi Jag Jivan Das to Jai Singh II dated vaisakha badi 13, 1769 VS (May 22, 1712)," in Sharma, ed., *Vakil Reports*, 256. I have included Persian terms in parentheses. The letter-drafters of the *vakil*s used different abbreviations for the rupee, including *rupa*. The bill of exchange was either spelt *hundi* or *hudi*. For a study of the language of the Rajasthani letter writers employed by the *vakil*s, see Mathias Metzger, *Die Sprache der Vakīl-Briefe aus Rājasthān* (Würzburg: Ergon, 2003).

agent was there whereas the firm had gone bankrupt. I am hopeful that the *hundi* would find favor with another trustworthy *sahukar*.

The Rajputs knew Dhanesur Gujarati's family and their agents in both Lahore and Shahjahanabad. At least since the 1660s, Har Ram Gujarati, their ancestor had been one of the major merchant-bankers for Rajput operations in the Mughal capital.[460] Such obstacles to encashing bills of exchange were no minor complications as credit operations stalled payments. They would delay payments to the Mughal chancery (*darabara kharaca*) in procuring imperial mandates (*sanad*) pending bureaucratic sanction as much as more ordinary payments for fodder, cattle, and horses, and provisions. Salaries of *purajat* employees had to be paid on time, or else, they too would vent frustration that payments they had contracted with intermediaries or traders were all stalled and complain to the *vakil*s. If it came to the worst, they would take recourse to the Mughal *kotwal*.

Let us take another remark made by Pancholi Jag Jivan Das in his letter to Jai Singh II a week after Dhanesur Gujarati's agent defaulted:

> *Samarama ki hudi rupaya 1000 aika hajara ki shamnajada* [*khanazad*] *ka rojagara* [*ruzgar*] *me bheji thi su gumasata to bhaga gaya aba sahukaran kahi prohata ki gumasata bulaya bheja aba jhuthi hudiyan lisha lisha bheje ge. kahi sarapha* [*sarraf*] *bhi hudi mola na li kahi vo badamamalai* [*bad-muʿamala*] *hai*.[461]

[460] "Rajasthani letter from Nanig to Geg Raj dated phalguna sudi 5, 1721 VS (February 28, 1665)," Doc. no. 316, *Amera abhilekha*, Bundle no. 2, Rajasthan State Archives, Bikaner.

[461] "Rajasthani *vakil* report from Pancholi Jag Jivan Das to Jai Singh II dated vaisakha sudi 8, 1769 VS (June 1, 1712)," in Sharma, ed., *Vakil Reports*, 260.

> Shyam Ram's *hundi* worth 1000 rupees (in words: one thousand) had been sent to the service of this household-courtier. However, his agent ran away. Now, the merchant-banker says that the *purohit*'s agent has been called and he is sending several fabricated *hundi*s. No merchant-banker is willing to honor this *hundi* and they say he [Shyam Ram] is a man of unfair dealings.

A week later, Jag Jivan Das is warning his patron of a crisis due to the disappearance of the agent, false *hundi*s with no solid backing being sent, and unfair dealings (*badamamala* from the Persian *bad-muʿamala*). Jag Jivan Das also commented on two other failed *hundi*s and concluded the matter thus: "I am sending back all the three *hundi*s" (*tisum hundi phera bheji hai ji*). We have given only a few examples for illustrating the complexities of *hundi* business, which were far from easy. Especially at long-distance, the absence of agents and other merchant-bankers unwilling to accept bills of exchange was a fundamental problem in the Mughal Empire.

What if the merchant-banker's agent was unwilling to honor the *hundi*, that is, what could Timurid public power do for the settlement of the commercial transactions of their subjects? State authorities backing up individual claims and settling them through legal enforcement was crucial since tacit consent of merchant-bankers was insufficient for credit relations. In such circumstances, one went to the *kotwal*—the Mughal equivalent of the Islamic legal institution, *shurta* (police). On July 1, 1706, Bhura, the *kotwal* of Aurangabad sent a letter to Parikshit Rai, Jai Singh II's *vakil* in the city on a merchant-banker's agent not honoring the *hundi* due on him.[462] The *kotwal*'s scribe wrote this letter at such great speed that his handwriting fits neither *shikasta* nor *nastaʿliq*; he could

[462] "*Naql* (copy) of the Persian letter sent by Bhura, *kotwal* of Aurangabad to Parikshit Rai, Jai Singh II's *vakil* at the imperial court dated 30 rabiʿ al-awwal julus 50/1118 AH (July 1, 1706)," Doc. no. 373, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*)," Bundle no. 2, Rajasthan State Archives, Bikaner.

hardly be bothered with elegance as he had to get work done, and this was perhaps just another routine dealing in the police station's daily frustrations with Aurangabadis. Perhaps we could give this style of Persian calligraphy a name: Mughal *kotwali*.[463] Amer had sent a *hundi* executed in the name of Shyam Lal to Parikshit Rai to settle expenses and payments due in Jaisinghpura. Chetan Das, Shyam Lal's *gumashta* in Aurangabad was unwilling to encash it. Bhura ordered that Chetan Das honor the amount of *hundi* informing him that he would take further steps in the matter after knowing the reply of Chetan Das regarding the payment of money. This is why the *vakil*s preferred encashing from agents rather than other merchant-bankers who, as independent legal entities in Hanafi law, could not be coerced to accept a *hundi*—that was not their liability. Though the agents also did not have fiduciary liability, they could be coerced to honor them as they were acting on behalf of their merchant-banker, the principal (*asil*). Any fiduciary liability at the end of the day fell on the principal. On these matters, the *qazi* was not the first point of jurisdiction as the Rajputs were not suing the *gumashta* for his conduct. Instead, they wanted the *kotwal* to order the payment. Legally, this was neither a tort nor a contract for which Mughal subjects went to judicial courts. Here no legal adjudication was happening, nor was any legal complaint being filed. Subtle or not so subtle force, persuasion, and moral suasion at the *kotwali* were sufficient.

In this letter, Bhura added that upon inspection of the mentioned *hundi* (*hundavi mazkur*), which was in the name of Chetan Das (*hundavi bi-nam Chetan Das*), he would investigate the matter with the drawer (*sahib-i hundavi*) and extract a "statement of facts" (*haqiqat*) from him on what had transpired and why the *hundi* had not been honored in the first place. However, in the

[463] In such documents of middling officials, we find extremely diverse handwritings. A detailed study of these handwritings could reveal the great diversity of literacy level and knowledge of socio-professional groups in Mughal South Asia. For a study on handwritings in other regions, see Gottlieb William Leitne, *A Collection of Specimens of Commercial and Other Alphabets and Handwritings as also of Multiplication Tables Current in Various Parts of the Panjab, Sind, and the Northwest Provinces* (Lahore: Anjuman-i-Punjab Press, 1883).

meantime, Bhura ordered that the *hundi* be endorsed immediately, and the payment made to Parikshit Rai. At each stage, proof (*hujjat*) was generated for the case. We may ask where the original of this letter went. It would be handed to Chetan Das so he could produce proof to Shyam Lal for his actions. Parikshit Rai filed the true attested copy with his letter to the Amer chancery, which wanted proof for all his actions and inactions. The chancery officials would have gone and vented their frustration to Shyam Lal for the inefficiency of his agents in Aurangabad. Most likely, the *kotwal* made a note of this case in his register (*sar rishta*).

During the monsoon months of 1706, Parikshit Rai had continuous complaints that he had too many expenses and all his payments were blocked either due to a delay in the receipt of *hundi*s or agents not honoring them. By August 3, 1706, Parikshit Rai had exhausted all possibilities; with no cash balances available, he was finally forced to take a loan from the *mahajan*s. The Kacchawahas were highly credit worthy and would have easily got credit but still taking loans would not have been perceived well, especially in the eyes of their rivals at the imperial court, a den of gossip and intrigue. On the same day, Parikshit Rai had got the papers for the Dausa *pargana* worth 415,530 *dam*s approved.[464] Many of these approvals required paying bribes to officers at the imperial court.[465]

[464] "Persian *vakil* report from Parikshit Rai to Jai Singh II dated 4 jumada al-awwal julus 50/1118 AH (August 3, 1706)," Doc. no. 1266, *Persian Vakil Reports*, Bundle no. 6, Rajasthan State Archives, Bikaner.

[465] These bribes do not appear anywhere in Mughal accounts precisely as they were bribes. However, they appear in Rajput records as the Amer chancery had to account for their payment and not believe Parikshit Rai's word. He could have embezzled money by falsely claiming he was paying bribes. Except sundry expenses, for large scale bribes that grandees like Bahrmand Khan and Ruh Allah Khan took, they sent letters to the Kacchawahas confirming payments and negotiating the amounts. Was the Padishah in the know? Yes, but he tolerated it as long as they did not exceed certain limits of propriety. Mostly, he didn't have to worry because upon the officers' death, their property would be escheated to the State.

Legal historians of merchant law in European and Mediterranean worlds have long challenged the notion that commercial instruments like bills of exchange are purely customary practices. Emily Kadens critically scrutinizes discussions on European merchant law often depicted too as independent of states, legislations, and statutes thus: "The story simply holds too much symbolic power for modern advocates of private ordering looking to give the underpinning of historical legitimacy to their political and economic theories about *how law is and should be made*."[466] From the Islamic legal perspective, Abraham Udovitch had argued in the 1970s for a similar need to recognize a distinct Hanafi "law of merchant" given the extensive treatment of commercial contracts in *fiqh*.[467] For instance, agents knew they had trust and not fiduciary liability, and also the Rajputs understood problems of legal enforceability of the contract to pay the *hundi* did not exist on another independent firm with its own liability. The *hundi* as a bill of exchange, conspicuously absent in Indic polities like Vijayanagara and even pre-Mughal Rajput territories, was present in the Deccan, Jaunpur, Gujarat, and Delhi Sultanates, which practiced *hawala*.

To different degrees, the Mughal State regulated and streamlined the *hundi* business. First, the state sought to regulate the market rather than adopt a policy of *laissez-faire* as that would have destabilizing consequences—this was particularly true for state revenues. The Mughal State did not fix premiums (*anth*) of what were commercial transactions outside state control. Still, a very high *anth* stalling cash flows was detrimental. Local Mughal officials often found amicable

[466] Emily Kadens, "The Myth of the Customary Law Merchant," *Texas Law Review* 90 (2012): 1157. Emphasis added.

[467] See Abraham L. Udovitch, "The Law Merchant of Medieval Islam," in *Logic in Classical Islamic Culture*, ed. Gustave E. von Grunebaum (Wiesbaden: Otto Harrassowitz, 1970), 113–30; Abraham L. Udovitch, "Reflections on the Institutions of Credits and Banking in the Medieval Islamic Near East," *Studia Islamica* 41 (1975): 5–21. Also see Nicholas Dylan Ray, "The Medieval Islamic System of Credit and Banking: Legal and Historical Considerations," *Arab Law Quarterly* 12, no. 1 (1997): 79–81.

agreements with the *mahajan*s to lower the premiums by offering them *quid pro quo*.[468] Second, the state had to provide a legal redress mechanism based on consistent norms and rules. The Mughal State did define and enforce the rules of the game. Bhura would not have ordered immediate payment of the *hundi* if the payee were another independent merchant-banker. The *kotwal* could simply not do that; if he dared do it out of pure hubris or high-handedness, the merchant-banker would seek legal redress from the judicial courts for coercive enforcement of contract without due cause. This is what happened to Jayanti Sahukar in Agra when Jaisinghpura's *kotwal*, Lal Chand forcibly arrested him and confiscated 55 *ashrafi* coins and his shawl (*dushala*).[469] Jayanti knocked on the court's door. Qazi Muhammad Wali, judge of Akbarabad jurisdiction scheduled the date for hearing Jayanti's case on January 26, 1694. After examining the concerned parties and the witnesses, Qazi Wali ordered the restitution of Jayanti's property. Thus, he annulled Lal Chand's illegal decision to arrest and confiscate property as null and void; it had no legal effect. It violated the Hanafi law of the land where an individual not party to a contract could not be forcibly thrust with fiduciary liability to honor another's *hundi* payment. Third, the Mughal State recorded, investigated, and safeguarded its subjects and their assets from fraud and cheating. Fourth, in what reflects their legal consciousness and agency, Mughal subjects were actively seeking legal redress (*istighasat*) if they were forced into inoperative contracts in

[468] In British calculations, a uniform *anth* rate fixed by fiat was another way to cap the problem of discount rate variations across the subcontinent.

[469] "*Siyaha-yi vaqiʿa-yi huzur nazim-i suba Akbarabad* dated 10 jumada al-thani julus 38/1105 AH (January 26, 1694)," Doc. no. 1937, *Akhbarat-i darbar-i muʿalla*, Bundle no. 22, Rajasthan State Archives, Bikaner. The document cited here is a copy of the daily news report of Akbarabad judicial court proceedings given to the Kacchawaha *vakil* in Agra upon request. Since Jaisinghpura's management was under Kacchawaha jurisdiction, Amer needed information of any court proceedings concerning the agglomeration's activities for maintaining law and order. In the archives, the copy has been erroneously mixed up with the *akhbarat* of the Mughal imperial court. The Mughal imperial court too received more extensive versions of news reports of judicial court proceedings from all cities and towns in its realms.

economic life. The intersection between the market and the state happened in the legal institutions, rules, and regulations. While goodwill and reputation mattered, they were hardly an antidote to safeguarding one's credit based on what others owed. As regular users of *hundi*s, the Rajputs kept detailed price lists (*nirakha hundavana*) figures from various cities from their perspective whereas the British later regulated different aspects of *hundi* transactions and maintained oversight.[470] Even the *hundi* premium (*anth*), which varied and had been left to the commercial groups to decide depending on the distances of money transfer and the volume of trade, was fixed at "an uniform rate of ten per cent., and one rupee extra on each hundred."[471]

The degrees of state intervention, legal redress for contractual norms, and financial policies vary. The extent to which the Mughal State was successful is a matter that cannot be addressed presently, but that it actively regulated economic life based on Hanafi legal norms is our point of departure. The state supplied uniform rules, whether one was in Lahore, Shahjahanabad, Akbarabad, Surat, or Aurangabad. By the seventeenth century, we are talking about centuries of acculturation to Islamic law, Hanafi or otherwise, in most of these cities. The Mughal political economy was not outside legal enforcement through military magistrate (*faujdar*), city police (*kotwal*), court (*dar al-qada*ʾ), and urban and suburban settlement officers (*munsarim*), and all their superintendents and agents on Timurid public power's behalf. Creditors, *banjara*s, weavers, caste councils (*panch*), the public, and even rebels (*mufsidan*) were aware of Timurid legal logic

[470] On regional dealings in the Kacchawaha domains, see Mamta Tyagi, "The Role of *Hundis* in the Jaipur Kingdom in Pre-Colonial India," *Social Scientist* 42, nos. 3-4 (2014): 25–44. On colonial attempts to streamline the *hundi* business, see Marina Martin, "Project Codification: Legal Legacies of the British Raj on the Indian Mercantile Credit Institution *hundi*," *Contemporary South Asia* 23, no. 1 (2015): 67–84.

[471] Macpherson, *Outlines*, 164.

and took recourse to *their* state institutions for the restitution of individual or collective claims and the legal enforcement of obligations on parties to contract.[472]

The use of *hawala* poses a variety of legal problems when combined with other contracts such as *rahn* (pawn), *wadiʿa* (deposit), *wakala* (representation), and *kafala* (guarantee).[473] What were the liabilities of the creditor (*muhil*) and the debtor to whom it was transferred (*muhtal ʿalayhi*)? Such problems that the jurists took into account as liability for not honoring contracts had consequences for different agents: drawer, drawee, payer, payee, transferor, and transferee, problems that kept recurring in Mughal social life because agents went bankrupt, committed fraud, and dishonored contracts. Through the influence of these Islamic legal institutions of intermediation for solving the principal-agent problem and its extensive practice among the Mughals and all their intermediaries, *vakalat* was the norm among post-Mughal States as much as British negotiations with regional satraps well into the nineteenth century.[474]

Moving further from the principal-agent relation in commercial activities of Mughal subjects, let us turn to how William Macpherson describes the *gumashta* in mid-nineteenth century:

[472] I will analyze a few cases in the next chapter.

[473] On the rules to combine *hawala* with these contracts, see Nizam et al., *FA*, vol. 3, 293–4. Also see Nicholas H. D. Foster, "The Islamic Law of Guarantees," *Arab Law Quarterly* 16, no. 2 (2001): 133–57.

[474] On the Maratha *vakil*s, see Rosalind O'Hanlon, "Entrepreneurs in Diplomacy: Maratha Expansion in the Age of the Vakil," *Indian Economic and Social History Review* 57, no. 4 (2020): 503–34; On *vakil*s in nineteenth-century Kashmir administration, see Siegfried Weber, *Die Persische Verwaltung Kaschmirs (1842–1892)*, vol. 1 (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 2007), 99–110. On *vakil*s in Ottoman judicial courts, see Ronald C. Jennings, "The Office of Vekil (Wakil) in 17th Century Ottoman Sharia Courts," *Studia Islamica* 42 (1975): 147–69.

"A gomastah is not personally responsible for acts done on behalf of his employers, —as, for example, where he draws a hoondee on their behalf, provided that he acts within the scope of his authority in drawing it. Where a negotiable instrument is made, —as where a draft is drawn in favour of A B or order, —no proof of consideration is requisite. Persons who are not parties in any way to a hoondee, as drawers, acceptors, or indorsers, ought not to be sued on the hoondee by the payee, merely because in a certain transaction they had undertaken to pay to the payee of the hoondee a sum of money stated to be due to him from the drawer of the hoondee, which sum was different from the amount of the hoondee."[475]

Macpherson's description is a reality the British confronted in the subcontinent, which when layers of hidden Hanafi rules of trust are unearthed reveals the formation of precolonial subjectivity. Whether Macpherson framed the *gumashta*'s liability by observing market transactions in Bengal, asking around for customary rules, or even a Hanafi jurist we cannot know. What we can perceive is that the *gumashta* not being "personally responsible" is an index of functioning under trust (*amana*) rather than fiduciary liability (*daman*).

Macpherson's idea that "no proof of consideration" was needed is another way to say that notarized proof (*hujja*) was not a requirement for consideration (*ʿiwad*) in commercial transactions. Nearly a century earlier in 1780, the EIC administration had set aside bills of exchange from their regulatory framework on the basis that the "custom of the country is to be abided by,"[476] which did not require as they said, a *Tamssook*. What EIC officials found in Indian customary practice

[475] Macpherson, *Outlines*, 158.

[476] See *Regulations for the Administration of Justice in the Courts of Mofussil Dewannee Adaulut, and in the Suddur Dewannee Adaulut, passed in Council the 5th of July 1781* (Calcutta: The Hon'ble Company's Press, 1781), 21. These exceptions remained in vigor in Bengal under Section 15 of Regulation III of 1793 and Section 9 of Regulation VII of 1795.

was the lack of legal requirements to sign a bond (*tamassuk*) in commercial agreements. That custom was a Hanafi legal principle that commercial transactions conducted on the basis of trust did not need to be contracted in a judge's presence. To answer this principal-agent relation in the Mughal and the post-Mughal commercial sphere, we can travel west to Ottoman Syria where the same legal regime existed. The Damascene Hanafi jurist, Ibn ʿAbidin (1784–1836) recognized the long-standing practice of keeping commercial transactions valid outside notarization at judicial courts.[477] The role of agents was the same in Mughal Murshidabad as it was in Ottoman Damascus. Differences were not in the legal doctrine of agency between these two Hanafi-Gunpowder Empires but cultural, linguistic, customary, religious, or caste-based. The *bania* merchant-bankers and the *ksatriya* Rajputs often touched financial instruments with reverence and wrote *Sri* on the top seeking the blessings of the Goddess of Fortune (Lakshmi)—a practice that would have been alien to Damascene merchant-bankers even though both were conducting *hawala* transactions.[478]

The story of colonial rule has been often narrated from the side of hegemony and resistance to it *as if* the precolonial subject's agency had not *always already* been constituted prior to colonialism and was mere *tabula rasa* with no legal institutions or conceptions on which laws could be written. There are ways to seeing through and beyond the colonial episteme when the episteme it tried to obliterate is what we are interested in recovering through these historical sedimentations. That could be both our idea of agency of legal subjectivity and Mughal subjects'

[477] Johansen, *The Islamic Law*, 371. Also see Baber Johansen, "Commercial Exchange and Social Order in Hanafite Law," in *Law and Islamic World: Past and Present*, eds. Christopher Toll and Jakob Skogaard-Peterson (Copenhagen: The Royal Danish Academy of Sciences and Letters, 1995), 81–96.

[478] Even when the Rajput chanceries and *vakil*s copied down the details of a bill of exchange, they do not forget to begin with *Sri* for each one of them. A comparative study of a pan-regional scale stretching from the Mediterranean, passing through the Indian Ocean to Bengal is needed to capture the legal commonality as well as differences based on localized customary practices.

agency (*niyaba*) of legal capacity (*ahliyya*), responsibility (*dhimma*), and liability (*daman*) as Hanafi law. The deconstruction of colonial discourse that remains at the level of what the British learned about India and about "native informants" for colonial knowledge production forgets the "native's" agency to which early colonial regimes of power had to adapt themselves, and, at times, apply the "native's" own rules. Recovering these precolonial voices leads us not to "unwritten custom" or "indigeneity" but to the social experience within a cosmopolitan Hanafi legal doctrine.

Paying Salaries to the Gentlemen Troopers: Accounting Debts and Fines

Several thousands of surviving pay slips (*qabz al-vasul*) and fiscal papers (*tumar*) for various officers, especially, the gentlemen troopers (*ahadi barqandazan*) and musketeers (*barqandazan*) employed in the Mughal army offer a perspective on intertemporal adjustments for salary payments. Taking a fraction of transactions Parasuram, the bursar (*tahvildar*) of Trimbak Fort on the Western Ghats in the Deccan made in the ninth year of the reign (1076 AH/1666–67), we can ascertain the financial logic of military recruitment at its accounting layer. This interaction between the state and its military recruits happened around finalizing pay (*vajib*) against contracts with seal (*bi-muhr*) when military ranks were assigned to them. On the appointment day, a peculiarity of the Mughal recruitment process appeared. Rather than being accompanied with a salary down payment, appointment papers came with approximately a month's salary granted *as* a state loan for recruits to manage expenses. Salaries would not be paid until four months later. Interest-free loans (*qard*) given as *mutalaba* (advance) and *musaʿadat* (easing loan) at the time of appointment to musketeers (*barqandazan*) to cover their expenses would have required only limited cash-balances at the place. In Trimbak's recruitment documents, loans range from a few

rupees to as high as 143 rupees.[479] The *mutalaba* loans too existed for small amounts from anywhere between a few rupees to as high as eighty rupees.[480] The recruitment contract produced a liability to work. These loans additionally burdened soldiers with a financial commitment. They were liable legally and ethically to work in order to "reimburse" their debts to the Mughal State. This financial commitment would generate fiduciary liability (*daman*) on their part towards the Mughal State, which bound them far strongly than a work contract would.

By this we may deduce the elementary functioning of how the loans were made and recovered. Loan amounts were granted by the *divan-i buyutat* of the Deccan as loans personally made by Aurangzeb ʿAlamgir as the creditor. Loan amounts were accounted separately in the ledger book (*avarja*) at the *bakhshi*'s office. Upon the conclusion of the contractual period, the *bakhshi*'s clerks issued a license (*dastak*) for each soldier's pay compared with the appointment letter (*talab*). Once done, the bursar's office prepared the pay slip (*qabz al-vasul*) and the soldiers obtained their dues from the treasurer. The system came full circle at the end of the cycle when outstanding claims were settled, and Mughal legal liabilities to pay were extinguished.

This process involved four time periods we can designate T1, T2, T3, and T4. Recruitment happened based on *ijara* contracts for the trooper's services considered usufruct. In T1, when the appointment letter (*talab*) was issued, an advance (*musaʿadat*) had been made as a down payment for expenses. However, this advance was not considered a part of the salary but a loan in legal and

[479] "Various *tumar* and *qabz al-vasul* papers of *barqandazan* and *ahadi barqandazan*," Doc. acc. nos. 4400, 4926, 4973, 4975, 4980, 4983, 4989, 4995, 5040, 5041, Telangana State Archives, Hyderabad. Officers at all levels took advances. In case the person died, a *fautinama* was issued and then loans were recovered or written off in case of non-recovery.

[480] "Various *tumar* and *qabz al-vasul* papers of *barqandazan* and *ahadi barqandazan*," Doc. acc. nos. 3853, 4522, 4524, 4560, 4566, 4618, 4643, 4971, Telangana State Archives, Hyderabad.

accounting terms as no work had been performed (consideration: *ʿiwad*) for a salary to be paid. Giving loans created a stronger fiduciary liability on the musketeers in their position as debtors to the state creditor. In T2, after a four-month period, pay slips were created.

In T3, which was close to T2, perhaps, the same day, or a few days later at best, actual payments were made at the spot. If ʿAlamgiri rupees were unavailable in the treasury, money exchanges (*sarf-i sikka-yi mubarak*) happened in T3. Full payments were settled only upon the end of service to avoid employees absconding (*farari*), which happened quite often. Even with an advance, the *barqandaz* could pocket the money and abscond, in which case an investigation was launched once a *yaddasht-i farari* (memorandum of desertion) was prepared. The *ʿarz u chehra* (muster roll) came in handy to verify the person's physiognomic details and prepare a *fararinama* (certificate of desertion).[481] Sometimes, these previously absconding musketeers had to be re-employed as specialized military labor supply was limited. Then, a fine was deducted from their salaries based on the *zabita-yi farari* (regulations on desertion). Parasuram, the bursar, was accustomed to handling many such cases in the mid-1660s. A year later, he dealt with many more ex-absconding musketeers.[482]

Even though salaries were enumerated as monthly in accounting, they were very often paid with arrears and delays of as many as four months for the *barqandaz*. These adjustments were required as revenues came in during particular periods such as the end of the *kharif* and the *rabi* cycles and money had to be transferred from elsewhere to the said treasury. The *divan-i buyutat*

[481] On the function of muster rolls in the Mughal army's identification processes, see Subah Dayal, "Making the 'Mughal' Soldier: Ethnicity, Identification, and Documentary Culture in Southern India, c. 1600-1700," *Journal of the Economic and Social History of the Orient* 62, nos. 5-6 (2019): 856–924.

[482] "Various *Qabz al-vasul* from julus 8/1075–76 AH (1665–66)," Doc. acc. nos. VIII/2137; VIII/2138; VIII/2139; VIII/2140; VIII/2141, Telangana State Archives, Hyderabad.

issued the advances to the *barqandaz* and the provincial *divan* paid once the *qabz al-vasul* was prepared with his seal affixed.[483] Since the *divan-i buyutat* ran the personal household expenditures of the Padishah, he made the advances on the creditor's behalf. Then, the *bakhshi* (paymaster) approved the pay slip, which was taken to the *tahvildar* who released the actual amounts once he would have received the list of *musaʿadat* and *mutalaba* from the *divan-i buyutat*.

In T4, higher up the bureaucratic pecking order, the *khan-i saman* received redacted accounts as per the imperial regulation that "daily reports and ledger books of the provinces as well as ledger books of the household officers without seal are to be sent" (*ruznamcha va avarja-yi subajat va avarja-yi rikab bi-muhr-i ʿadam bi-tabdil mi rasad*) alongside "signatures and petitions for loans" (*dastkhatt va ʿarayiz-i mutalaba*).[484] Documents had probative value only when accompanied by seals whereas ledger books were prepared without seal (*bi-muhr-i ʿadam*).[485] By involving so many local, provincial, and imperial departments and chancery employees, one had both supervision and avoided possible collusion in mismanagement and embezzlement.

Many types of fines brought in additional money to the exchequer; fines were most often deducted from pay slips. A *tafavut* (fine) was levied for a variety of negligent behavior leading to

[483] Sarkar, *Mughal Administration*, 30; 38. Depending on the *divan*s, their choices, and other constraints, procedural modifications were made as and when necessary. *Dastur al-ʿamal* collections preserved today that were primarily collected by colonial authorities offer a snapshot of procedures as they existed at different points of time and not their historical development. Reconstructing the timeline of changes to regulations will require the verification of orders, *akhbarat*, and documents, and a categorization of *dastur*s across time. Once we know their temporality and reasons for modifications, the financial consequences of each type of change can be mapped out.

[484] *Zavabit-i ʿalamgiri*, f. 20b.

[485] The difference between contracts under seal and without seal in the Mughal world requires an independent study. They are akin to English common law provisions of "contracts under seal" and "contracts under not seal." Moreover, an analysis of how these types of contracts were brought closer to common-law principles in British India also remains wanting.

the non-performance of the responsibility (*dhimma*) of individuals recruited for their administrative and military apparatus.[486] For dereliction of duty and absence, the day's salary would be deducted (*tafavut-i haziri*). Other fines included *tafavut-i khvurak-i asp* (fine related to horse feed costs), *tafavut-i silah* (fine for non-maintenance of contractually stipulated military armor), *tafavut-i tankhva* (fine for pay difference), *tafavut-i tashiha* (fine for delay in verification), *tafavut-i tazi* (fine for non-maintenance of stipulated number of *tazi* horses), *tafavut-i tirandaz* (fine for non-maintenance of stipulated number of archers), and more.

Any final salary settlement involved the following procedures. First, the gross salary for the total time period was determined from which compulsory deductions (*qusur*) for one day's unpaid monthly leaves (*kami-yi ayyam-hilali*),[487] horse feed, which were subtracted (*hashv-minha*). Second, advanced loans from the appointment date were deducted followed by any possible fines to determine the actual cash to be paid. In this process, what the musketeers received could be 10-20 percent less than the gross salary. If they were paid in older coins, *sarf-i sikka* would be adjusted. When no *sarf* is mentioned, we may not assume they were paid in ʿAlamgiri coins since the pay slip (*qabz al-vasul*) was an accounting sum-total not the actual payment. The *khazanchi* conducted the *sarf* operation after verifying the *tahvildar*'s pay slip.

Parasuram calculated Karam ʿAli Beg s/o Parwana Beg, a *barqandaz*'s salary in the following manner for the four-month period from rabiʿ al-awwal julus 7 to jumada al-thani julus 7:[488]

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[486] On similar fines imposed for delays in agrarian revenue payments, see Srivastava, *Siyaqnama*, 300–1.

[487] An exception was made in the month of ramadan when one day's free paid leave was issued to all as a largesse.

[488] "*Qabz al-vasul* dated 22 shaʿban, julus 7/1075 AH (February 28, 1665)," Doc. acc. no. VII/4393, Telangana State Archives, Hyderabad. The exact specifications of the *zabita-yi farari* depend on what the current orders were during

Pay slip for rank with *du aspa* (two horses)

75 rupees per month

total dues (*vajib*) of 300 rupees for 4 months

deduction of 10 rupees for *kami-yi ayyam-i hilali*

deduction of 20 rupees for *mutalaba*

135 rupees per horse for four months

deduction of 8 rupees for desertion according to the *zabita-yi farari*

Final balance: 127 rupees

What do these temporal adjustments tell us about Mughal system of payments and cash balances? That to recruit musketeers, all one needed at the time of recruitment was a down payment of a small amount of advance approximately equivalent to a month's salary. Since the imperial court determined deduction rates, rough estimates of total cash balances needed for the bursar to cover all his final payments were calculated beforehand. The Mughals bought four months' time in Trimbak as they often did for military recruitments. With no time preference for money, arrears were settled at their face value. What seems like a delay in regular payments was buying time to bring cash to Trimbak Fort's treasury from locally earmarked and allocated collected revenues if

that period. If that particular regulation could still be found, we can determine the rules Parasuram applied. Or, based on the actual adjustments made by Parasuram for different income slabs, we can reconstruct those same rules. Regulations exist to apply; application of regulations is the mirror-image of the regulation. The duration for which the regulations were standing orders requires comparing adjustments from different years and ascertaining when changes occur, which would imply a new regulation had been put in place. New orders superseded repealed ones.

the harvest season was around the corner or shift cash-balances from another jurisdiction's treasury.

Managing liability, guarantees, and writing-off obligations to the Mughal State

The relation of debt and credit is an "exchange of obligation" (*mudayana*).[489] The Mughal State was an institution of public credit, which gave loans worth tens of millions of rupees to its military officers, employees, subcontractors, and agrarian intermediaries in the countryside. In Hanafi law, *mutalaba* is a generic term for an advance of a sum of money made for any reason though for the Timurids they meant advances on salaries and personal loans for easement. Like other Muslim States, Timurids produced legally authorized financial instruments built on Hanafi notions of credit, debt, and obligations.

Both *mutalaba* given for official expenditure and *musaʿadat* for personal reasons were reimbursed in installments (*hama ba aqsat*) by accounting deductions from future salaries. Many of loans given to the imperial elite were repaid as installments with a mark-up based on a repurchase agreement (*bayʿ bi'l-wafaʾ*) quite akin to European *rentes*.[490] The Mughal State redeemed the payment of the principal in several installments higher than the original loaned amount. These installment-based loans did not violate the prohibition on unlawful gain (*riba*) as

[489] Nizam et al., *FA*, vol. 6, 463. Also see Valentino Cattelan, "Property (*māl*) and Credit Relations in Islamic Law: An Explanation of *dayn* and the Function of Legal Personality (*dimma*)," *Arab Law Quarterly* 27, no. 2 (2013): 189–202.

[490] Based on a similar logic of repurchase, the church did not consider annuities, *census*, *rentes*, and *montes* in Europe as usurious in nature. See John H. Munro, "The Medieval Origins of the Modern Financial Revolution: Usury, *Rentes*, and Negotiability," *International History Review* 25, no. 3 (2003): 505–62; Geoffrey Parker, "The Emergence of Modern Finance in Europe, 1500–1730," in *The Fontana Economic History of Europe*, vol. 2, *The Sixteenth and Seventeenth Centuries*, ed. Carlo M. Cipolla (Glasgow: Collins/Fontana Books, 1974), 560–82.

they were reasoned based on Hanafi *makharij* (exits) and *hiyal* (legal stratagems) to circumvent the strict prohibition.[491] Abu al-Fazl gives a normative installment scheme fixed at a particular time in Akbar's reign.[492] In reality, the installments (*aqsat*) varied depending on the loan amounts, the standing of the officers, and their ability to make payments. In each case, the Padishah determined the deferment or lump sum payment of several installments on a case-by-case basis upon petition at the privy council. In 1681, Kishori Singh Hada received *zamindari* rights for which he stood surety (*mal zaman*, fiduciary liability for being an intermediary in land revenue collection, as mentioned by the privy council's minutes keeper) in an installment worth 40,000 rupees.[493] Getting loans involved intricate internal dynamics at the imperial court between the high officers, Bahrmand Khan, Ruh Allah Khan, and Yar ʿAli Beg. The military officers opened lengthy negotiations with them before the matter could even reach the Padishah for his final approval. The *vakil*s made payments at a special office for loans (*daftar-i mutalaba*).

The Mughals issued another kind of loan (*qard*) of fungible goods (*mithliyyat*), called *dastgardan*.[494] *Dastgardan* was the basic contract for issuing gunpowder in battles. Gunpowder is a fungible commodity, which upon use ceases to exist and is later replaced by new gunpowder. They are replaced by a generic substitute (*jins*) and not the same thing such as when one loans a particular horse.[495] If fungible commodities cannot be replaced by the same kind, then the price

[491] On *hiyal*, see Valentino Cattelan, "Between Theory(-ies) and Practice(-s): Legal Devices (Ḥiyal) in Classical Islamic Law," *Arab Law Quarterly* 31 (2017): 245–75.

[492] Abu al-Fazl, *The Áin-i-akbarí*, ed. H. Blochmann, vol. 1 (Calcutta: Asiatic Society of Bengal, 1872), 275–6.

[493] "*Vaqiʿa* dated 2 ramadan julus 25/1092 AH (September 5, 1681)," Doc. no. 255, *Akhbarat-i darbar-i muʿalla*, Bundle no. 9. Rajasthan State Archives, Bikaner.

[494] Unlike fungible goods, in the loan (*ʿariya*) of non-fungible goods like land, they have to be restituted to the creditor in their original form.

[495] Brunschvig, "Corps certain," 304.

(*qima*) is charged as a deduction on their salaries. On one occasion, 30 *man*s of sulphur, 30 *man*s of charcoal, and 120 *man*s of cooked (*pukhta*) saltpeter were issued in this form (*bi-tariq-i dastgardan*).[496] Though the Mughals used *dastgardan* for loans of all fungible commodities, in common parlance, it was also a simple money debt that private individuals contracted. Claude Martin (1735–1800), Major-General of the Bengal Army had raised a *dastgardan* with Awadh's merchant-bankers repayable on an installment basis.[497]

Low-ranking officers too took loans, very often, at the time of their appointment. For each agreement a *yaddasht-i mutalaba-yi ʿarzi* (memorandum of petition of claims) was prepared at the *suba* headquarters. These lists were sent to the *divan* and listed in both the *siyaha* and the *avarja* under the heading, "recovery of aid" (*bazyaft-i musaʿadat*) issued by the *tahvildar* and were later verified by the comptroller specially designated for this purpose (*mustaufi-yi khizana-yi musaʿadat*).[498]

Siyaha-yi huzur is a type of proceedings of the provincial court where a variety of contracts (*ʿuqud*) were concluded, and details of each case recorded.[499] Let us consider one such proceeding for loan waivers. In 1655, Muhammad Beg, who held a minor 40 *zat* rank *mansab* had been

[496] Yusuf Khan, *Selected Waqai*, 61. For other uses of the *dastgardan*, see Ibid., 223; 224–5.

[497] Rosie Llewellyn-Jones, ed. *A Man of the Enlightenment in Eighteenth-century India: The Letters of Claude Martin 1766–1800* (Delhi: Permanent Black, 2003), 312–3. A Muslim inheritance case including the payments of *dastgardan* loans arbitrated in 1871 gave rise to litigation by heirs at the British Privy Council as late as 1928. "Zarif-un-Nisa Bibi and Others vs. Shafiq-uz-Zaman and Others," in *The Indian Law Reports; Lucknow Series. Containing Cases determined by the Chief Court of Oudh and by the Judicial Committee of the Privy Council on Appeal from that Court*, vol. 3 (Allahabad: The Superintendent, Government Press, 1928), 379.

[498] *Zavabit-i ʿalamgiri*, f. 35b. Also see Sarkar, *Mughal Administration*, 26.

[499] In the Mughal chanceries, the existence of everything and every activity was recorded in the form of *siyaha* (inventory), *yaddasht* (memorandum), *haqiqat* (statement of facts), *kaifiyat* (narrative account), *vaqiʿa* (news report), and *ruznamcha* (journal). Each of these documentary forms could be used for a variety of purposes and had further sub-categories whose analysis is beyond the scope of our present study.

dismissed from office; he still owed 214 rupees 7½ annas for pending instalments of his *mutalaba*.[500] These dues included two entries: *babat-i tafavut-i dagh* (on account of fine for delay in branding of horses) valued at 19 rupees 12 annas and 194 rupees 11½ annas for a half-yearly estimate of *hasil-i mahall-jagir* (annual receipt of the benefice, 389 rupees 7 annas). The sum total (*bariz*) of 214 rupees 7½ annas was written off upon Beg's petition that he had incurred expenses prior to being made the *ʿamil* (tax collector). Beg petitioned that he had spent the money and was not in a position to repay it. His petition would have reached Shahjahanabad, but it seems to have not survived.

The scribe preparing the contract noted all the legally enforceable particulars of Beg's debts and listed them under a statement below his description (*bi-tafzil-i zail lazim ast*). The standard formulaic way to convey orders asking one to perform the task was *bi-tafsil-i zail lavazim kunad* (as detailed below/in accordance with the following statement, do the necessary or the consequential).[501] The scribe recorded Beg's "liability on account being revoked from his seat" (*zimma-yi u az babat bardasht mahall*). In these passing references written perhaps at great speed to finalize routine chancery clearance, scribal procedure leaves behind the traces of interplay between responsibility (*dhimma*) and its seat (*mahall*) in Hanafi law. Beg, the individual in the position of debtor, is the seat (*mahall*) of his liability in so far as the liability to pay off debts falls upon him. In turn, the debtor's liability offers the creditor the legally enforceable right (*lazim*) to

[500] "*Siyaha-yi huzur* dated 4 jumada al-thani 1065 AH (April 1, 1655)," Doc. acc. no. 94 in Khan, *Selected Documents of Shah Jahan's Reign*, 194–5.

[501] See *Mirʾat al-haqaʾiq*, MS Fraser 124, Bodleian Library, Oxford, f. 124b. In Rajasthani, the expression became *taphasila jaila*. This practice is similar to what we say today: "Please do the necessary" or "Please do the needful." This formulaic manner of writing was between officials of equal or close to equal rank. Imperial orders of the Padishahs came as injunctions to act from a superior to a subordinate where the text opens with *umidvaram* ("We are hopeful") followed by all concerned parties to perform their actions. As one goes down the hierarchy, the language and tone of commanding and ordering declines and increasingly degrees of conveying orders begin to appear.

the restitution of his property.[502] Two choices existed for the creditor, the Mughal State, in this case: either confiscate a portion of Muhammad Beg's properties to recover the unpaid loan or write it off. The imperial court had written off (*muʿaf*) the loan as a favor for Beg's earlier service. Thus, the Mughals were not exercising their right to legal enforceability (*ilzam*) of Beg's liability and forfeited the loan recovery.

In Hanafi legal terms, the Aurangabad jurisdiction concluded a *sulh* contract, an amicable agreement between Shah Jahan and Muhammad Beg involving acquittance (*ibraʾ*) of the debtor and the relinquishment of the creditor's claim (*isqatʿan al-dayn*).[503] The *FA* defines a *sulh* contract thus: "its legal explanation is of a contract for mutual satisfaction by means of which contention is set aside" (*amma tafsiruhu sharʿan fa-huwa annahu ʿaqd wadaʿa li-rafaʿ al-munazara bi'l-taraddi*).[504] Such extinction of obligations are recurring throughout the Mughal chancery records and a *sulh* contract had to be drafted for every claim exceeding one rupee with full details of the case, its execution, and accounting headings.[505] In this case, the *sulh* agreement concerned only a part (*baqi*) of the actual money owed as the rest had been already deducted from Muhammad Beg's pay slip.[506] Then, a true attested copy (*naql muvafiq-i asl*) would have been issued to Beg. In case anybody else in the Mughal chancery asked him to pay his dues, he could show his copy as proof

[502] *Zavabit-iʿalamgiri*, f. 35a.

[503] On different types of relinquishment of claims, see R.Y. Ebied and M.J.L. Young, "Isḳāṭ," in *Encyclopaedia of Islam*, Second Edition, eds., P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs, accessed 29 September 2020, http://dx.doi.org/10.1163/1573-3912_islam_SIM_8719.

[504] Nizam et al., *FA*, vol. 4, 249. On the extinction of obligations, see Schacht, *Introduction*, 148. On *sulh* contracts, see Hallaq, *Shariʿa*, 269–70.

[505] On provisions and rules of a *sulh* contract for *dayn* (money), see Nizam et al., *FA*, vol. 4, 252–6. On the *hiyal* (legal stratagems) for a *sulh* contract, see Nizam et al., *FA*, vol. 6, 477.

[506] Various methods existed to adjust arrears, balances, remainders, and dues called *baqaya* in accounting parlance. See Srivastava, *Siyaqnama*, 306–7.

that his debts had been written off. In turn, these waived expenses would be written off in the *avarja* (ledger book) for the respective entries on *tafavut* and *hasil*.

Muhammad Beg was a minor officer in the Deccan who may have never met Shah Jahan in his life. Beg's employment was based on the trust he could repose in the Mughal State, which too cared for its employees on its own terms. Through these incentives, honoring contracts, and settlements the Mughal State earned the trust of many professional groups and individuals as they too had "normative expectations" from their state's behavior. These contractual procedures were meant to legally absolve debt (*qard*).[507] The text carried the intentionality of the Padishah in his voice; it was equivalent to being in his presence. Customarily, Muhammad Beg would have performed *sijda* while receiving the contract. Padishahi sacrality and Hanafi legality were hand in glove in Timurid justice.

From Mughal fiscality's perspective how do we account for these exemptions? We might readily think of them as a loss to the exchequer and its expenditure (*kharch*). However, that loss was a long-term investment Timurid public power made to earn the trust of its subjects. It is, in reality, an accounting adjustment to transfer back 214 rupees 7½ annas to Muhammad Beg that he had anyway already spent in his private expenses and that money had entered into the pockets of various individuals to whom he had paid for whatever he bought. It had disappeared into the Mughal economy. Such written-off charges need to be collated and estimated to get a

[507] Unlike modern contracts, the life span of Mughal contracts was short, not exceeding a year but also varying; when a new *jagir*, which lasted at best for five years, older contracts ceased to have legal effect and became worthless paper, which is why the need to maintain them for legal purposes did not arise. In a different manner, today, the statute of limitations applies to contracts and adjudication. In colonial Bengal, the earliest limitation appeared in Section 14, Regulation III of 1793 that was introduced for both Hindus and Muslims. See Ninnian Hill Thomson, *Act XIV of 1859 regulating the Limitation of Civil Suits in British India: With a Commentary* (Calcutta: Thacker, Spink & Co., 1870), 2–3. The consequences of such changes on continued use of precolonial legal contractual forms remains wanting.

comprehensive view of Mughal transfer of its receipts that went back into the economy at large. How do we account for such expenditures in the aggregate figures we have: are they already reflected as hidden expenses, had they been removed and set aside by the chancery to have a clearer view of the total value of writing-off, or, included in some and excluded in others? That is to say, where do they find expression, because they have to, since they already had fiscal relevance for the Timurids?

Let us take another scenario that presented itself in 1662, now, for someone more of a match to the Timurids. ʿAbd Allah Qutb Shah (r. 1626–72), the Golkonda ruler had agreed to pay a million rupees as *pishkash*. His minister, Mulla ʿAbd al-Samad was secondarily liable for the Qutb Shah's fiduciary liability. Ibrahim Khalaj who had been appointed as news writer in Golkonda sent several details to Aurangabad on scheduled payment installments. Until the Mughals ultimately conquered Golkonda, they kept them in a tributary relation under a guaranteeship (*kafala*) agreement.

On September 16, 1661, ʿAbd al-Samad signed a *taʿahhud nama* standing guarantee (*kafala*) under liability (*daman*/*zaman*) to pay the tribute to Muhammad Nasim, the local Mughal officer in 5 installments (*aqsat*) on a two-monthly basis beginning from rabiʿ al-awwal 1072 AH (October 1661). In the agreement, the first four installments were to be paid in 44,444 *hun*s 8 annas each and the last 22,222 *hun*s adding up to a total of 200,000 *hun*s.[508] The Mughals chose a *kafala* agreement where Samad guaranteed the tribute, Golkonda's debts owed to the Mughals. Samad was the guarantor (*kafil*) who was secondarily liable to the principal (*asil*), Qutb Shah. In a *kafala*,

[508] "*Ruznamcha* dated 1 safar julus 4/1072 AH (September 16, 1661)," Doc. acc. no. IV/538, Telangana State Archives, Hyderabad.

both the principal and the guarantor have responsibility (*dhimma*). The guarantor stands surety for the principal's obligations and through the guarantor one can recover dues. Samad remains equally responsible for the failure to transfer the funds. Why would the Mughals choose such an agreement? Samad was one of the high-ranking members of the Golkonda elite, who could meet their financial demands to *pishkash* by extracting agrarian rents (legally, pawning revenues) or raising loans in the money market. Standing financial surety under *kafala*, the Qutb Shah and Samad were jointly accountable for not honoring the tribute agreement (*taʿahhud nama*). Samad, though a Golkonda employee, was entrusted (*amana*) to work for fiduciary liability (*daman*) he had vis-à-vis the Mughals. The Mughals could rest assured that their interests would not be sacrificed.

While the contractual agreement existed on paper, Golkonda was unwilling to honor it. Perhaps they were unable to do so or just to buy time by stalling the payment schedule.[509] One of the Mughal officials (*banda-yi dargah*) did pressure Samad to pay up the next installments. Samad made a part payment in 4000 *hun*s and the rest in ʿAlamgiri rupees for a total of 100,000 rupees. The 4000 *hun*s were exchanged into other monies through a *sarraf*. In return, Samad was given a receipt (*chitthi*) for the down payment and made to sign a personal surety bond (*muchalka*) to honor arrears payments. The bond was the guarantor's (*kafil*) written undertaking to settle what had been agreed originally in the *taʿahhud nama*.[510] In the meantime, the Mughals kept the bond as proof alongside the original agreement. On April 9, the second installment of 125,987 ʿAlamgiri

[509] "*Ruznamcha* dated 10 rajab julus 4/1072 AH (February 19, 1662)," Doc. acc. no. IV/1099, Telangana State Archives, Hyderabad.

[510] On *kafala* guarantees, see Nizam et al., *FA*, vol. 3, 243.

rupees 8 annas was paid by drawing a bill of exchange (*hundavi-qabz*).[511] On May 13, 69,811 ʿAlamgiri rupees 12 annas were finally deposited in coins.[512]

The Mughal State's tributary relations with Marwar, Mewar, and Amer Rajput states, *pishkashi zamindar*s in Central India, Deccan Sultanates, and Ladakh were *kafala* agreements. Local officials on both sides who negotiated the terms and conditions stood financial surety as guarantors on their principal's behalf. Such *kafala* practices of tribute-extraction remained the norm with the Rajputs, the Sikhs, and the Marathas. Even the EIC's tributes were negotiated by guarantors who we often consider go-betweens today. In fact, they were all practicing Islamic guaranteeship agreements through their acculturation to negotiating with the Mughals. Increasingly, in eighteenth-century commercial climate, merchant-bankers with high liquidity stood surety directly and indirectly.

Through the concepts of fiduciary liability (*daman*) and trust (*amana*), Hanafi law addresses solutions for the vexed principal-agent problem. In Golkonda tribute negotiations, Samad and the Mughal official, Muhammad Nasim both share fiduciary liability despite their asymmetrical relations: Samad as the contracting party's guarantor and Nasim as the Padishah's agent (*vakil*). Under *kafala*, Samad's representation of the Qutb Shah's interests was tied to fiduciary liability of acting as if he were also an agent liable to faithfully pay the Mughal tribute. That is, the *kafala* made him behave in accordance with Mughal interests too—law is a coercive force to act within the limits of legal authority, which was high on the priority list for a Padishah

[511] "*Ruznamcha* dated 29 shaʿban julus 4/1072 AH (April 9, 1662)," Doc. acc. no. IV/1224, Telangana State Archives, Hyderabad.

[512] "*Ruznamcha* dated 4 shawwal julus 5/1072 AH (May 13, 1662)," Doc. acc. no. V/212, Telangana State Archives, Hyderabad.

who had to get others to work for him. He was an intermediary guarantor with fiduciary liability. Nasim's agency was special (*khass*) and restricted (*muqaiyad*).[513] Muhammad Nasim was entrusted with specified negotiations by Aurangzeb ʿAlamgir as appointer (*muvakkil*) and restricted to raising the exact amount or more of the tribute.[514] This delegated authority to represent the Padishah with was, at once, a matter of being personally duty-bound to him through fidelity and bound by power of attorney to state interests on legal obligations. Entrustment to faithfully undertake state affairs was incentivized with financial compensation for office rights (*hazir zamini*) issuing from Timurid public power. Nasim's agency to act as no less than the Padishah's trustee was a non-financial compensation integral to his fidelity. This principal-agent relation was inscribed on Mughal officers' seals cast at the imperial court: *banda-yi ʿAlamgir* (bondsman of the World-Conqueror).

Supervision over State transfers: The information economy of Mughal cash balances

How did the imperial court maintain oversight over these matters, whether Beg's written-off account or Golkonda transfers? A copy of the inventory (*siyaha*) and the ledger entry (*avarja*) was sent to the imperial court either as part of the daily news report or independently. Regular accounts of the treasury balances were sent too by the bursars and routine inspections would be conducted to ensure that the money had not been embezzled. On October 18, 1681, the imperial

[513] Agency can also be general (*ʿamm*) and unrestricted (*mutlaq*).

[514] Raising more tribute was legally acceptable as it benefited the appointer. If the tribute was less than the stipulated amount, Nasim needed Aurangzeb ʿAlamgir's approval to finalize the decision. Nasim could not act otherwise as his agency was not unrestricted. We are not privy to the Padishah's precise oral or written instructions. Treaties, letters, and documents of other Mughal, post-Mughal, and British negotiations must be studied in the light of guaranteeship processes that had developed over the course of Mughal rule.

retinue had camped at Qasimgarhi on its way to Burhanpur. The winds and rain were so heavy, that the *saraparda*, the curtains forming a wall of canvas surrounding the cluster of imperial tents were blown off, and the retinue was stuck for the day. The day's march forward was called off due to bad weather, though the empire's state affairs could hardly be put on hold. As the *shagird pisha*s nailed back the *saraparda* and stabilized its ropes, the privy council was in session. ʿAbd al-Karim Khan, the *Bakhshi al-mulk* was frustrated with the quality of accounts his office was receiving and complained that they were in disarray. The Padishah had ordered Bahrmand Khan to get the head clerks (*pishdast*) of Ruh Allah Khan to sign a bond (*muchalka*) promising they would promptly send these ledger entries in inventory lists (*siyaha-yi daftar*) to the *bakhshi*'s office.[515] By December 3, the imperial retinue was camping near Burhanpur. Following up on what was decided on October 18, Sukh Raj, the petition-writer (*matalib navis*) had sent the *siyaha* papers from the *bakhshi*'s office to the *Divan-i aʿla*.[516] The privy council decided that once accounts were in order, both copies of *siyaha* papers and the *divan*'s accounts were to be handed over to Amanat Khan, the *divan* of the Deccan *suba*. Amanat Khan was present at the imperial camp and his servants would have packed the accounts on bullock carts to take them back to his offices in Aurangabad. The Timurid imperial court was not cut off from its *suba*s; its information and paper economy kept the relation alive.[517]

[515] "*Vaqiʿa* dated 15 shawwal julus 25/1092 AH (October 18, 1681)," Doc. nos. 313, 314, *Akhbarat-i darbar-i muʿalla*, Bundle no. 9, Rajasthan State Archives, Bikaner.

[516] "*Vaqiʿa* dated 2 dhu al-hijja julus 25/1092 AH (December 3, 1681)," Doc. no. 373, *Akhbarat-i darbar-i muʿalla*, Bundle no. 9, Rajasthan State Archives, Bikaner.

[517] For a study of the Mughal *suba*s, see Parmatma Saran, *The Provincial Government of the Mughals [1526-1658]* (Allahabad: Kitabistan, 1941)

*Mansabdar*s, *zamindar*s, and tributary states who owed money made *hundi* transfers to the imperial court or another treasury point as dictated by the Mughal State. This practice was common for revenue remitters in other Islamicate empires. The Mughal State itself would avoid making remittances or payments in *hundi*s, except under very rare circumstances.[518] Others deposited cash at Mughal chanceries through *suftaja* transfers. Aurangzeb ʿAlamgir conducted *hawala* transactions of another kind without third party merchant-banker intervention: shifting the money physically from one treasury point to another when cash shortages existed or order treasury withdrawals in one jurisdiction for another comparing the available cash balances.

Indeed, Aurangzeb ʿAlamgir regularly wrote personal payment orders (*ruqʿa*) in his own hand to the *Bakhshi al-mulk* (imperial paymaster), Bahrmand Khan. On May 6, 1693, he asked Bahrmand Khan to stay on in Aurangabad and send him one million rupees under a thousand cavalry military escort.[519] On such high security issues, the Padishah wrote himself to show the urgency and seriousness; Bahrmand Khan would have no doubt recognized his master's hand. The appropriate high-quality patent paper and silk cover slip were issued against a memorandum by the *divan* safeguarding them under lock and key. From a rough draft prepared on cheaper quality paper, Aurangzeb ʿAlamgir would compose his payment order in fair calligraphic style before it was inserted into a silk cover slip and sealed with the red lacquer imperial seal. Once done, the matter was included in that day's privy council minutes. A memorandum was made at the imperial court's postal collection point. Journal entries were made at every check point on the highway

[518] Subrahmanyam, "Introduction," 35.

[519] "*Vaqiʿa* dated 11 ramadan julus 37/1104 AH (May 6, 1693)," Doc. no. 64, *Akhbarat-i darbar-i muʿalla*, Bundle no. 21, Rajasthan State Archives, Bikaner.

when it changed hands until Bahrmand Khan received it and entered its receipt in the Aurangabad Fort's journal.

If a letter or a payment order was lost for any reason, an investigation would be conducted precisely between those two check points where it had appeared and disappeared in the journal entries. On high level matters, additional security measures were taken. When the Rajputs conquered Sansani Fort from the Jats in 1705, a golden key was prepared for the fort entrance. For every fort in its realms, the imperial court kept a golden key symbolizing its state ownership. In Hanafi law, the key is part of the building and not an independent legal object.[520] Jurists define that the key cannot be a separate thing since its purpose is ownership and enjoyment of the property in question. ʿAbd al-Rafiʿ, Mathura's intelligence reporter (*savanih nigar*) sent a petition to the Superintendent of the Postal Services, Yar ʿAli Beg informing him that he was sending a bag weighing one *seer* which contained Sansani Fort's golden key and Multafit Khan's petition (*ʿarzdasht*) to the Padishah reporting the conquest narrative.[521] ʿAbd al-Rafiʿ directed the postal workers to weigh the bag at every highway check point (*rahdari*) to see if it still equalled one *seer* and safely deliver the bag in Yar ʿAli Beg's hands.[522] Had the weight been less than one *seer* at a

[520] In real estate transactions, if the seller did not tender the key at the time of purchase, one could petition a judicial court. The court would issue an injunction order (*taʾkid*) compelling the seller to hand over the key to the rightful owner. For now, I have not found any actual litigation on this matter.

[521] Unlike chronicles, which paint battles metaphorically, reports give precise details of men and animals killed, arrested, and hurt during combat, inventories of gunpowder, weapon, and other military expenditure as well as effects found inside forts. These inventories were notarized by high military officers and the witnesses to the incidents heard by the *qazi* who endorsed their testimony (*mahzar*). Such detailed reports and notarized documents were filed with the imperial court upon conclusion and assessment of the battle verified by witnesses and sealed. Until these finalized investigations could reach him, a first report was sent to the Padishah on victories and defeats to avert him of the events. This information allowed the imperial court to instruct relevant officers elsewhere on future steps to be taken. Officers stationed around the vicinity of the incidents shared details amongst themselves too.

[522] "*Naql* (copy) of ʿAbd al-Rafiʿ's letter dated julus 49 (1705)," Doc. no. 809, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*), Bundle no. 5, Rajasthan State Archives, Bikaner. The Rajputs received this copy as they were in-charge of *faujdari* responsibilities in 1705.

check point, it would be certain the key had been stolen between those two points where it changed hands. The postal worker had the golden key as possession (*qabd*) of state property in trust (*amana*). Stealing it was tantamount to usurping state property.

How were money transfers made for imperial purposes elsewhere between intermediaries? Only the imperial court could issue large payment orders and inform the relevant parties to make the necessary arrangements. A *hasb al-hukm* was addressed to ʿAtiq Allah to send 500,000 rupees to Akbarabad for the prince's army in 1689.[523] On the same day, a copy of the *hasb al-amr* reached *Amir al-umaraʾ* Shayista Khan asking him to arrange for a cavalry escort in his jurisdiction as *faujdar* of Akbarabad.[524] The half a million rupees would pass through Mathura (Islamabad) under Bishan Singh's *faujdari*. When the treasury passed through their jurisdictions, *faujdar*s took charge of the escort. Nobody was willing to do this without being informed from multiple trustworthy sources confirming this was indeed real and not an ambush. The Mughal imperial court had sent original orders to ʿAtiq Allah and *Amir al-umaraʾ* that their respective chanceries copied and sent them to the Kacchawahas. Their *vakil*s independently corresponded on this matter. At least, four, if not more, high-level sources confirmed this matter. Only then would Bishan Singh ask his cavalry troops to set out on escorting the imperial treasury.

Copies of all these imperial orders sent to different officers are preserved today in the Rajasthan State Archives in Bikaner as part of several hundreds of thousands of documents from

[523] "*Naql* (copy) of *hasb al-hukm* addressed to ʿAtiq Allah dated 16 rabiʿ al-thani julus 32/1100 AH (January 28, 1689)," Doc. no. 293, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*), Bundle no. 2, Rajasthan State Archives, Bikaner.

[524] "*Naql* (copy) of *hasb al-amr* addressed to *Amir al-umaraʾ* Shayista Khan dated 16 rabiʿ al-thani julus 32/1100 AH (January 28, 1689)," Doc. no. 373, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*), Bundle no. 2, Rajasthan State Archives, Bikaner.

the Kacchawaha chanceries. They remain together not due to accidents or vagaries of history. Instead, they owe their collective survival to Timurid public power's information economy, its legal architecture, and documentary design. When orders came, each officer's chancery made a copy (*naql*) or several and acquainted all concerned parties and nobody else.[525] Two caveats are needed. First, when such orders from the imperial court were copied down, an internal logic existed and was set in motion. The scribe systematically removes phrases within the text such as "We command" or "We are hopeful" that convey the intentionality and the commanding prerogative of the Padishah. Copying those phrases was equivalent to duplicating them and speaking in the Padishah's authorial and authoritative voice—this was tantamount to imposture of the highest order! Occasionally, the procedure took a turn in indirect speech: "by the Padishahi solicitude, it has been hoped that…" (*bi-ʿinayat-i padishahi umidvar buda bi-danad ki*). This was second nature in Mughal chancery culture. Second, the Kacchawaha copies are without a seal (*bi-muhr-i ʿadam*) as they were sent for confirmation of treasury transfers from Shayista Khan's and ʿAtiq Allah's chanceries to the Kacchawahas who filed them for internal records. Since the original order issued from the imperial court, a *qazi* alone had the legal competency to notarize their copies. However, none of these copies were notarized as they were not intended for any legal procedure.

In the 1660s and the 1670s, the Aurangabad governor, Amanat Khan's office sent ledger drafts (*avarja*) of cash-balances and inventory of effects (*siyaha-yi amval*) of the headquarters and its *pargana*s, Baglana, Ramgir, Trimbak, and Udgir to the imperial court in Shahjahanabad every few days. In the early 1660s, the *Nuskha-yi dilkhusa*'s famed author, Bhim Sen's uncle, Diyanat

[525] Each officer had his personal chancery, revenue officials, and representatives who managed his benefices, offices, and correspondence with the imperial court and other officers. All their salaries were calculated as a share within his benefice (*jagir*). For instance, Jag Jivan Das's salary was 85,000 *dam*s, or, nominally, 2125 rupees. Since the revenue realization varied, his income differed every year and was contingent upon agrarian circumstances. Hence, he would have to exercise precaution in his personal household budgeting.

Rai who was head of *vizarat-i iqbal panah* regularly received *basta*s of Daulatabad papers from Amanat Khan with accounts. For *taqavi* loans given to peasants in Ramgir, Lalchand, the local *divan* directly sent the ledger books (*avarja-yi taqavi*) since loans were issued from the Padishah's accounts.[526] *Taqavi* was a benevolent loan (*qard hasan*) given to peasants, who had limited savings, for recurring capital expenditures such as the use of ploughs, deducted later during revenue realization. By giving loans, the Timurids bound their subjects into fiduciary liability for holding state assets. Three tier auditing was the norm. Shahjahanabad did the final and third-order auditing of imperial revenue aggregates verifying ledger-book (*avarja*) entries, the Ramgir treasurer did local first-order auditing, and Aurangabad made a second-order auditing of the *suba* and sent its assessment independently to Shahjahanabad. Aurangabad would also regularly send officers to inspect the treasury balances in Ramgir to confirm they matched with accounts. Similar auditing would have invariably happened across all the *suba* jurisdictions within Mughal realms. The Padishah's top priority had always been appointing governors to better administer *suba* revenues.[527]

Mughal records are replete with high-profile and ordinary embezzlement, cheating, manipulation, and fraud both within Mughal services as well as commercial life. In 1661, Tama, the Deshmukh of Marmarpet and his accomplices were arrested for siphoning off 1600 *hun*s of Ramgir revenues (*vajh-i mal vajibi*).[528] Or, when Yar Muhammad falsely appropriated 16,000 rupees from Alamgirpur revenues, his case was tried by Ujjain's Qazi Abu al-Barakat. Afzal Khan

[526] Yusuf Khan, *Selected Waqai*, 65.

[527] On the circumstances for Murshid Quli Khan's appointment to improve Bengal revenues, see Alam and Subrahmanyam, "Introduction," 46–55.

[528] Yusuf Khan, *Selected Waqai*, 46.

deposited money under a financial surety (*zamanat*) he signed in the *qazi*'s presence to be recovered at a later date.[529] When embezzlement investigations were ongoing, notes were shared with various local superintendents, police, and military officers to prevent the accused from conducting normal business, absconding, transferring illegitimate and illegally acquired wealth elsewhere, or burying the hoard, pending resolution. Indeed, it was later discovered that Yar Muhammad had buried the misappropriated revenues outside Alamgirpur.[530] In another case, Rajput representatives received a brief note (*chitthi*) on Fateh's misappropriation of Khori's *kharif* crop revenues in 1684.[531] These cases would be investigated by the *faujdar*s or other military officers and persons tried at judicial courts for the following legal types of fraud: concealment (*tadlis*), deception (*khilaba*), lesion or misrepresentation (*ghabn*), gross misrepresentation (*ghabn fahish*), deception (*shushsh*), imbalance (*gharar*), and trickery (*taghrir*).[532] In different ways, state agents were responsible for the collection of revenues as much as liable for misappropriation by self or through their intermediaries.

Quite often, payments of the current fiscal year were adjusted in previous or later years under "on account" headings (*ʿala al-hisab*, which took a vernacular inflection, *alala hisava* among the Rajputs) and not made as real cash transfers.[533] Once we descend to the levels of the

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[529] "*Naql* (copy) of *zamanat* concluded by Afzal Khan in Qazi Abu al-Barakat's presence in Ujjain," Doc. no. 538, *Khatuta maharajagana*, Bundle no. 4, Rajasthan State Archives, Bikaner.

[530] "*Chitthi* (note) on the discovery of a hoarded treasure in Alamgirpur," Doc. no. 334, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*), Bundle no. 12, Rajasthan State Archives, Bikaner. When discovered, any buried treasure had to be reported to local officials as it constituted state property.

[531] "*Chitthi* (note) on Fateh's misappropriation," Doc. no. 9, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*), Bundle no. 1, Rajasthan State Archives, Bikaner.

[532] Their detailed socio-legal study and adjudication in Mughal cities is beyond the scope of our present work.

[533] *Khajana hajuri* 1786 VS (1729–30), Doc. nos. 1336, 1340, Bundle no. 10, Rajasthan State Archives, Bikaner. The extent to which Rajput chancery practices in Rajasthani and Persian mirror Mughals raises a potential issue. The

daily grind, Mughal chanceries across the realms are revealed to us as the state's "settlements and clearance branches" performing accounting adjustments to limit excess velocity of money inflows and outflows, which would change the distribution of cash balances. Since the Timurids had no time preference for money, interest was not charged for "on account" adjustments.[534] In chancery clearing of debts and credits, this method had two major advantages. First, intertemporal adjustments could be recovered in a later cycle as "on account" charges in revenue records. Given the absence of time preference for money, all the chanceries did was determine equivalence: whether a payment or receipt had been cleared by real or accounting settlement. Adding interest rates at different rates and estimating would have been a more tedious operation. Second, not charging interest rendered it easy to spread payments as subjects had no reason to complain of unfair practices. This was particularly true for their non-Muslim subjects who had a time preference for money.

From our perspective, this equivalence method opens a conundrum for interpreting Mughal fiscality, as has happened in the last century of historiography. All aggregates contain artificial inflation or deflation making it hard to analyze actual growth rates in revenue receipts. Mughal historians themselves find various aggregates for the same revenue collections from different sources. While their reliability has remained a contentious issue among historians, it is more than likely they are various kinds of gross and net amounts found by adding or removing "on account" (*ʿala al-hisab*) charges of previous or later fiscal cycles, written-off sums (*muʿaf*), arrears and remainders (*baqaya*), additions (*zavaʾid*), subtractions (*hashv-minha* or *minhaʾi*), exemptions and

Persian chancery would have only been established after Akbar's alliances with the Rajputs, and it is highly likely that the Mughals sent officers and *munshi*s to acquaint them with this accounting culture.

[534] Steep fines were no doubt levied for non-compliance of orders, tasks, and deadlines, which have no bearing on time preference for money.

transfers, and sundry charges. The recognition of these hidden figures, hidden for us and not to the Mughal accountants for whom they were implicit assumptions and explicitly known adjustments, helps avoid a distorted impression that the analysis of aggregates presents even at the *pargana* level. One possible option to correct these distortions would be finding ledger books though none seem to have survived. Or another daunting but feasible option remains to redo Mughal accounts in a contemporary manner from the kinds of individual documents of which we have analyzed a negligible fraction of examples. Each document is an exemplary illustration of the Mughal State's "settlement and clearance branches" as a phenomenon already inscribed within Hanafi juridico-economic notions such that its fiscal relevance cannot be divorced from its legalities. Rather, the fiscal relevance issues from Hanafi legal mechanisms to extinguish obligations. All that the chanceries did daily was settle those legal obligations in accounting terms.

Our legal, theoretical, and empirical analysis of Mughal settlement of payments addresses an objection Bayly and Subrahmanyam posed to John Richards's thesis on the centralization of Mughal public finances.[535] Bayly and Subrahmanyam argue that had treasury wealth been shifted to imperial centers as Richards claims, huge inter-regional commodity trade would be required for such transfers to be possible. Agreeing with their critique, we have shown that money was not transferred to the "center" in the seventeenth-century Mughal State. Depictions of a centralized state have erroneously led historians to deduce that aggregate figures imply treasury concentration whereas daily treasury records and Mughal monetary management unmask the spatial nature of its portfolio holdings.

[535] Bayly and Subrahmanyam, "Portfolio," 414.

For efficiency's sake, Mughal cash balances were spatially distributed across the jurisdictions of the empire. Hence, regions were never willfully starved of money despite short-term shortages that may have arisen, a logical conclusion consistent with economic principles. Irrespective of his location—often camping on the highways of Hindustan, Aurangzeb ʿAlamgir still got cash balance records from across the empire's treasuries. This process involved time lags ranging from the previous day to over a month, depending on how far he was from any part of the empire. When he was in Shahjahanabad, he knew the previous day's balances there assuming the accounts had been completed; when in Aurangabad, he would have known Delhi's data with a few weeks' lag until the post arrived. Thereby, this process of information economy centralized around the imperial court as the nodal agency allowed Aurangzeb ʿAlamgir to dictate money payments and transfers as much as get a macro-picture of Mughal monetary balances on any and every day of his reign.[536]

In Timurid rationale, monies kept in the *suba* and *pargana* jurisdictions were transferred between short distances against payment orders and allocations dictated by the imperial court. Officers of the respective jurisdiction assisted with military escort. Many financial settlements were accounting adjustments at the conclusion of the contracts or even shifted "on account" (*ʿala al-hisab*) to future fiscal periods. The Timurids neither relied on "great firms" nor on "great households" for their monetary system to work. From the state perspective, officers were under *hazir zaman* obligation and did not act as households. Household is a modern way of assuming kinship ties to reflect a patrimonial-bureaucratic state of the Weberian kind being run on affective

[536] No doubt, there were periods when highways became impassable, dangerous, or occupied by enemies creating bottle necks for the smooth flow of this information economy. Yet, those matters too were routinely investigated and resolved.

connections between officers.[537] Holding state money was a fiduciary liability of individuals working for formal state institutions operating under a legal regime.

Timurid public power, rather than operate on resource centralization as it has been unfortunately depicted, relied on centralization in decision-making (*tadbir*). The Padishah and his imperial court supervised the coordination of information between officers. By keeping a check on who possessed what kind of information and how they shared it, the ideal was to prevent state agents acting at cross purposes to one another. Smoothening state functioning and coordinating their actions in real time meant the imperial court acted as a nodal agency for all information to arrive and be rerouted appropriately across the empire.

Conclusion

Jadunath Sarkar coined the term *kaghazi raj* to describe the Mughal chancery's back and forth that generated an endless paper trail and rules and regulations that went up and down the bureaucratic order—a term so transparent that it reveals its invention under the shadows of the British Raj more than Timurid public power. Yet, if we recover voices from within Tek Chand Bahar's historically situated experience, we have discussed Timurid public power grounded in *kaghaz zar*, promissory notes, agreements, and contracts for deferred payments made on paper support. The Timurids had little fetish for paper, which is why they hardly archived them. As we have shown, they had more consideration for the contracts that can be probed when the legal

[537] This perception holds true for the imperial household too. In reality, princes who came of age were officers of State and princesses were beneficiaries of State largess as they did not work for the Mughal State. Often, Aurangzeb ʿAlamgir has been depicted as not a particularly not a good father. The Timurid public power of the *imam*, though, had no concept of children. It did not even have heirs to the throne as it was left to posterity, politico-military acumen, human will, and God's bounty that decided the actual outcome.

realities inscribed onto paper to uphold liabilities—a network of contracts, claims, counterclaims, credit, and debts that were perpetually settled. Within the underlying Hanafi epistemic categories of thought and world, every document, action, or order is a snapshot of this empire in its day-to-day running. In this state's ledger books, the left-hand side contained reasons (*irad*) justifying the amount noted on the right-hand side in the money of account (*bariz*). Since every fraction of an anna of the rupee mentioned in its accounts had value (*qima*) for this state, proof (*hujja*) had to be generated for everything in contracts and promissory notes.

The wide daily usage of these financial instruments is only one aspect of how Hanafi ideas had trickled down to many Mughal subjects. *Daman* remains a notoriously elusive juridical concept despite being central to how Muslim state fiscality was conducted by generating claims, distributing usufruct rights, and entrusting private agents with tasks on the state's behalf. In *daman*, "[t]he obligation and commitment is, at the very least, financial. The financial commitment is necessarily undertaken by contract or agreement that involves some degree of entrustment."[538] Such an elusive concept of fiduciary liability and financial commitment was second nature to Mughal subjects by the fact that they had been entrusted with possession of state properties and their enjoyment by contracts. *Daman*'s ubiquity in South Asia reflects the ingenuity of Timurid public power in translating Hanafi legal doctrine into legal norms of social experience. This was Aristotle's disposition or second nature, that is, a habit that one acquires through experience. Through their historical memory, vernacular deformations like *jamin* or *jamanattu* still retain the semantic content tied to a strong sense of fiduciary liability emanating from Islamic law, representing how subjects were lawfully bound to Islamicate polities that even "colonial

[538] El Fadl, "Tax Farming," 26.

modernity" could not consign to oblivion. The law in the Mughal public sphere was imperial and local, the Hanafi written legal tradition that had become the customary practice of Hindustan, Islamic as much as secular. Rather, Timurid public power was "secular" by virtue of being "Islamic" and not despite it. We have tracked the historical evidence in order to trace the genealogy of this historical experience, unconsciously remembered in vernacular spoken forms in which we still employ terms that originate in cosmopolitan Arabic *fiqh* idiom. Precolonial subjects' own ideas of claims, incentives, and entitlements had been formulated in a language of law whose traces we still find within our postcolonial present.

To this day, despite historical transformations of the last few centuries, all use the variants of the term *mal* as *res in commercio*, the way jurists defined it, and never make the mistake of confusing a tradable good (*mal*) with a mere "thing" (*saman*, *chiz*, *jins*, *jinis*, *dinasu*, *dinisu*). That distinction is akin to the ones between a commodity and a thing. Even the many words for fungible goods such as *jinis* or *dinisu* originate in *jins* for the generic and interchangeable commodities like wheat (as does *chose de genre* in French Civil law). That Bengali- or Kannada-speaking persons today use variants of the Graeco-Arabic *jins* goes back to Islamic notions through which the subcontinent's peasants had perceived, measured, weighed, and ultimately parted with their grain (*ghalla*)—the most common type of fungible commodity taken as the generic example by Hanafi jurists in their legal doctrine—as state revenue for centuries under Islamicate polities. Indeed, most peasants would think through Graeco-Arabic and Islamic concepts as they were the ones who stood at the market-state nexus to pay agrarian rents as part of an unwritten agreement. In the urban world of stronger legal guarantees, market regulations, adjustment of debts and credits, commercial practices, and adjudication, were all founded on the Hanafi ethic.

In fact, theoretically and empirically, Islamic legal institutions and procedures had created, nurtured, and more importantly, strengthened this secular public sphere and facilitated interactions between economic agents, professional groups, religious and caste communities. Where had Mughal subjects been schooled to the Hanafi law? In public spaces, markets, streets, agrarian fields, pay offices, police stations, judicial courts, octroi collection points, imperial courts, entry points to walled cities and forts—all those sites of interaction within the state-market nexus where they met each other outside their private lives. In this public sphere, they contracted, signed legal deeds and agreements, disputed them, and as most often happened, displayed their promissory notes (*kaghaz zar*) for verification of their identities and proof for their transactions to state agents. The experience of Mughal public life was an experience of the Hanafi ethic. Timurid public power's responsibility had been to instill this way of perceiving legal relations. In every step of these processes, Timurid public power was displayed for all to see since it was through its legal institutions—hardly ever by beholding a faint distant glimpse of the Padishah at the *jharoka* in person—that Mughal subjects' public life had been rendered possible.

On that note, we turn to our final chapter on Timurid public power's self-understanding of sovereignty as "general magistrature" (*riʾasa ʿamma*). Legal competency on the one hand, and, on the other, information and time coordination of state affairs from the imperial court sustained the logic of Timurid public power.

Chapter 7

The Legal Design of Empire:

Juridical Agency and Spheres of Competence in Timurid Public Power

The nature of political authority the Timurid rulers exerted has been a subject of much debate. They include discussion of political ethics (*akhlaq*) passing through Sufi mysticism and the "religious accommodation" of non-Muslims.[539] Perhaps, no idea has had as much currency in Mughal historiography as Akbar's "universal compact" (*sulh-i kull*).[540] The study of these conversations from courtly confines or Sufi milieu are depicted as choices Padishahs made. A central element missing in Indo-Islamic historiography remains Hanafi law as we have shown so far. The counterpart to that legal system is the legal-theological authority of the Padishah as the *imam* of the Muslim State. What was the self-understanding and the self-fashioning of the Muslim State as a "lawful" state, which guaranteed extensive rights to "Hindu" *jati*s (designated as *qaum* in legal documents) as its "protected communities" (*ahl al-dhimma*)?

Contrasted with the depictions of Akbar or Jahangir,[541] what has been often termed Aurangzeb ʿAlamgir's "religious policy"—leaving aside the imposition of the capitation fee (*jizya*)

[539] See Alam, *The Languages*; Muzaffar Alam, "*Sharia* and Governance in the Indo-Islamic Context," in *Beyond Turk and Hindu: Rethinking Religious Identities in Islamicate South Asia*, eds. David Gilmartin and Bruce B. Lawrence (Gainesville: University Press of Florida, 2006), 216–45. On *akhlaq*, see Mehrdad Boroujerdi, ed., *Mirror for the Muslim Prince: Islam and the Theory of Statecraft* (Syracuse: Syracuse University Press, 2013); Said Amir Arjomand, "Medieval Persianate Political Ethic," *Studies on Persianate Societies* 1 (2003): 3–28; Denise Aigle, "La conception du pouvoir dans l'islam : miroirs des princes persans et théorie sunnite (XIe-XIVe siècles)," *Perspectives médiévales* 31 (2007): 17–44.

[540] See Rajeev Kinra, "Handling Diversity with Absolute Civility: The Global Historical Legacy of Mughal *Sulh-i Kull*," *The Medieval History Journal* 16 (2013): 251–95.

[541] See Lefèvre, *Pouvoir*; John F. Richards, "The Formulation of Imperial Authority under Akbar and Jahangir," in *Kingship and Authority in South Asia*, ed. John F. Richards (Delhi: Oxford University Press, 1998), 285–326; John F.

and the demolition of two temples—has been dominated by Mughal skirmishes with their internal and external enemies such as the Marathas, the Sikhs, the Jats, and other agrarian chieftains, and even Muslim states in the Deccan.[542] The Timurids had enemies who came in all shapes and stripes. The problem with these portrayals of Aurangzeb ʿAlamgir is that they are based on heroic narratives of combatants. That is, they are representations of ideology and prejudice between Mughals and their enemies when conflicts ensued. It has been estimated that the combatant to civilian ratio in Mughal India was 1:40. These depictions and histories relying on combatant experiences still leave behind the sense of justice or injustice among non-combatant civilians who would have constituted approximately 97.5 per cent of the population. Combatant behavior is always different from civilian realities in any state, and that is true for Timurid warlords. Indeed, warlords as they were, they made a distinction in how they behaved with combatants, criminals, courtly elites, and civilian populations. As ruthless as Aurangzeb ʿAlamgir was with his enemies and as demanding on how courtiers kissed the threshold of his throne, he spoke in Hindavi to ordinary people without any qualms and paid them appropriately for any services they rendered to him. That was an aristocratic dignity of belonging to Timur's lineage.

A historical assessment of how Timurid sovereign claims would manifest to ordinary Mughal subjects requires us to take an alternative route than those so far proposed. Namely, we must focus not on courtly conversations accessible to a select few, but the Mughal documentary trail: an analysis of procedures and ways in which justice was sought, conducted, and ought to have been as per Hanafi law—legal reality, norm, and doctrine. For Mughal subjects, these

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Richards, "Norms of Comportment among Mughal Imperial Officers," in *Moral Conduct and Authority: The Place of Adab in South Asian Islam*, ed. Barbara Daly Metcalf (Berkeley: University of California Press: 1984), 255–89.

[542] See Chandra, "Some Considerations"; Satish Chandra, *Mughal Religious Policies: The Rajputs and the Deccan* (New Delhi: Vikas Publishing House, 1993).

processes were bureaucratic to say the least, involving multiple levels of pleading with supplication (*iltimas*), petition (*ʿarzdasht*), and recommendation (*sifarish*), carefully treading various legal institutions, and jostling social hierarchies of military magistrates, judges, police, and middling officials. To add to this conundrum was an (in)surmountable problem of translation they faced: dealing with an administration whose official language, Persian, few could speak, let alone read and write. As we saw earlier, this lived experience of ordinary subjects like merchant-bankers, agents, or palanquin-bearers in Mathura, Aurangabad, or Agra was one deeply socialized to the Hanafi legal system. What has not been established so far is whether they or their counterparts in other cities and towns had ever heard of *sulh-i kull* or what it meant to them.

What was the *imam*'s legal authority? What was the legal design and architecture of the Mughal Empire: how did it work, or rather, how did the ruler and other state agents to whom he paid salaries for diligent execution of their tasks, get it to operate on the ground? Paying closer attention reveals that Timurid justice was founded on Aristotelian distributive and commutative justice. Our argument in this concluding chapter is grounded on four dimensions of Timurid public power. First, we describe the legal authority and powers of the *imam*, which emanated for the Timurids from their affiliation to the Ashʿari-Maturidi school of rational theology (*kalam*). Second, debates on religious accommodation *eo ipso* assume that there was a need to "accommodate" religious difference whereas we argue that when the legal institutions are given due consideration, we can demonstrate the fact that the rights of non-Muslims as "protected communities" (*ahl al-dhimma*) were strongly guaranteed by the largest and the most diverse Muslim State in all the premodern world. Third, judges in their professional capacity to adjudicate and provide legal redress occupied a central position in facilitating private transactions as well as ensuring the smooth functioning of Timurid public power. We argue that they applied legal norms

to safeguard individual claims and check the arbitrary power of Mughal officials. Fourth, and most crucially, ordinary civilian life is where the operative or non-operative nature of justice mechanisms finds relevance. Even a rebel (*mufsid*) had to be lawfully tried by a military magistrate (*faujdar*) who could torture him. The rebel still had rights to legal redress at the judicial court (*dar al-qada'*). Chronicles contain gory descriptions of executions and insults traded. While that happened, rebellion had to be proven beyond reasonable doubt—indeed, very high degree of certainty was needed to apply criminal punishments.[543] As it was invariably uncertain, many minor rebels were imprisoned for short durations, pardoned, and released. Hence, though they regularly appeared in front of Mughal judicial and magistrate courts, none of them make appearances in the heroic narratives of Persian chroniclers.

Through a multi-scalar approach, we will analyze how the seventeenth-century Mughal Empire is best characterized as "unitary dominion" over inter-networked jurisdictions and nested hierarchies of officers that were imperially administered. The imperial court was the nodal agency for the information economy and time coordination of state affairs across its realms. Interlinkages created through Hanafi conventions, norms, and institutions sustained the relation between the imperial and the local realities. If local affairs were disconnected from imperial ones, then what would be the point of a centralized Timurid public power? Oversight and supervision were fundamental to guarantee Mughal subjects' claims through intermediaries. Bringing out emic and internalist viewpoints to the centerstage of the theater of Timurid sovereignty, we can account for institutional and psychological issues as they would have appeared to Mughal subjects. How do

[543] See Intisar A. Rabb, *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law* (Cambridge: Cambridge University Press, 2014); El Fadl, *Rebellion and Violence*; Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century* (Cambridge: Cambridge University Press, 2005). A detailed study of Mughal trials of combatants, rivals, and enemies is beyond the purview of our present analysis though we will tangentially address them later in the chapter.

we create an image of their imaginations, opinions, and perceptions, expectations, interests, i.e., their agency reflecting the nature of this interaction with the state?

Rational Theology and Jurisprudence: The *imam*'s General Magistrature

It is conventional to argue that Islamic sovereignty is crystallized around the *imam*'s capacity to strike the coin and enforce the Friday prayer read in his name.[544] In chapter 5, we saw the different mechanisms of monetary management that went into realizing this aphorism of striking the coin and maintaining the circulation of the money of account. On Fridays, the daily journal from each town reached the regional headquarters informing that the congregational prayer had been held and the *khutba* read in Aurangzeb ʿAlamgir's name with details of who led the prayers and read the sermon. On May 20, 1661, Ramgir's prayers were attended by the local revenue officials, Muhammad Muʾmin and Nasr Allah, the judge, Qazi Muhammad Fazil and the sermon read by Husam al-Din.[545] On the same day, Aurangabad's governor, Amanat Khan went to the congregational mosque and presented a robe of honor to the orator (*khatib*).[546] The imperial court received the daily proceedings of major cities. Through internal intelligence, the imperial court kept track of sermons for any suspicious statements, rhetorical gestures, or oratory renderings contesting the *imam*'s legal authority.

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[544] Norman Calder, "The Significance of the Term *imām* in Early Islamic Jurisprudence," *Zeitschrift für Geschichte der Arabisch-Islamischen Wissenschaften* 1 (1984): 253–64; Norman Calder, "Friday Prayer and the Juristic Theory of Government: Sarakhsī, Shīrāzī, Māwardī," *Bulletin of the School of Oriental and African Studies* 49, no. 1 (1986): 35–47.

[545] "*Ruznamcha* of Ramgir sealed by ʿAbd al-Fath dated 1 shawwal julus 4/1071 AH (May 20, 1661)," Doc. no. IV/185, Telangana State Archives, Hyderabad.

[546] "*Siyaha-yi vaqiʿa* of Aurangabad sealed by Muhammad dated 1 shawwal julus 4/1071 AH (May 20, 1661)," Doc. no. IV/192, Telangana State Archives, Hyderabad.

Unlike European monarchical power, which was the king's right to decide life and death of his subjects and limited power on property,[547] the *imam* had the right to decide livelihood and usufructuary rights of his subjects. Therefore, the study of Timurid public power is inseparable from the analysis of fiscality, property, and the political economy of the subcontinent. Moreover, the Padishahs had no divine right to rule that ruled out the scope for widespread religious persecution. In the discourse of rational theology (*kalam*), the *imam* holds *riʾasa ʿamma*. Aurangzeb ʿAlamgir enjoyed the highest jurisdiction; he was the general magistrate having the right to settle religious (Islam alone) and state affairs.

Bakhtawar Khan, who served Aurangzeb ʿAlamgir for nearly three decades as a close personal aide left behind the chronicle *Mirʾat al-ʿalam*. Titled the "Mirror of the World," this was a subtle reference to his master's desire of being a World Conqueror like Alexander. For Bakhtawar Khan, his master's justice was equal to that of the ancient Persian king, Naushirvan (*ʿadl az Nushirvan*) for he possessed all the perfect qualities (*khidev-i kamil al-zat*). He was the teacher of polite learning in virtue to the creatures of God (*mutakhalliq bi-akhlaq-i khalaʾiq-i ilahi*)—he infused his subjects with the enhancing qualities of the Hellenic ideals of *arete* (excellence) and *phronesis* (practical wisdom).[548] For the Mughal chronicler, Muhammad Amin, this is combined with the "furtherance of the Prophet's traditions" (*tarvij-i sunan-i nabavi*), "executing the divine commands" (*ijraʾ-i avamir-i ilahi*), and "arrangement of welfare matters" (*tanzim-i umur-i masalih*). In this metaphorical language, where religious piety is real as much as symbolic, he possessed the wisdom in discerning the divine word (*hikmat bi-lugha-yi izidi*).[549] Muhsin Fani

[547] Michel Foucault, *History of Sexuality*, trans. Robert Hurley, vol. 1 (New York: Pantheon Books, 1978), 135–59.

[548] Bakhtawar Khan, *Mirʾat al-ʿalam*, 383.

[549] Muhammad Amin, *ʿAlamgirnama*, 1096.

Kashmiri who met Aurangzeb ʿAlamgir during his visit to Srinagar and was rewarded with two thousand rupees and a robe of honor (*khilʿat*) defines the Padishah as the "command of virtuous dominion and perfect leadership" (*amr-i riyasat-i fazila va imamat-i kamila*).[550] In generating the "norms of statecraft" (*navamis-i daulat*), he comes close to the Hellenic ideal of *nomos empsychos* ("law animate").[551] Or, as Farabi claims, the head is the "custodian of the law" (*qayyim bi'l-namus*) who is tasked with regulating the polity in three spheres: "(a) sciences, opinions, and beliefs; (b) the reasons for the nomoi and the laws; or, (c) likewise, the civic ways of life and associations."[552]

Virtue ethics (*akhlaq*) exalts authority and yet occults the legal-theological source for the admiration of the *imam*'s authority. Ghazali (c. 1058–1111), whom Aurangzeb ʿAlamgir read regularly, had demonstrated that it was necessary for the Muslim community to establish *sultan mutaʿ* or *imam mutaʿ*, i.e., "obeyed authority." This idea pertained both to the appointment of a single male individual whose authority would be paramount as well as the prototypes and conventions in the exercise of power. Ghazali designated the function of *imama* or imamate as the "leadership of the community," which "does not belong to the art of the intelligibles, rather it is one of the legal topics."[553]

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[550] Muhsin Fani Kashmiri, *Akhlaq-i ʿalam ara* (Lahore: Jadid Urdu Type Press, 1982), 193. Also see Louis Gardet, *La cité musulmane. Vie sociale et politique* (Paris: J. Vrin, 1981); Neguin Yavari, *Advice for the Sultan: Prophetic Voices and Secular Politics in Medieval Islam* (Oxford: Oxford University Press, 2014); Muzaffar Alam, "*Akhlāqī* Norms and Mughal Governance," in *The Making of Indo-Persian Culture: Indian and French Studies*, eds. Muzaffar Alam, Françoise 'Nalini' Delvoye, and Marc Gaborieau (New Delhi: Manohar, 2000), 67–95.

[551] Artur Steinwenter, "*NOMOS EMPSYCHOS*. Zur Geschichte einer politischen Theorie," *Anzeiger der Akademie der Wissenschaften in Wien, Philosophisch-Historische Klasse* 83 (1946): 250–68.

[552] Al-Farabi, *Alfarabi, The Political Writings: "Selected Aphorisms" and Other Texts*, trans. Charles E. Butterworth (Ithaca: Cornell University Press, 2001), 128.

[553] Al-Ghazali, *Al-Ghazālī's Moderation in Belief: Al-Iqtisād fī al-iʿtiqād*, trans. Aladdin M. Yaqub (Chicago: Chicago University Press, 2013), 229.

In Ghazali's view, the postprophetic leadership of the *imam* does not originate from reason but in the preservation of the law. The sole person enjoying general jurisdiction over all religious and this-worldly affairs is invested with the legal authority combined with the functions of a general magistrate. Through his judicial functions, the *imam* was the jurisdiction for final appeal on legal matters; he could relax punishments as much as take on extraordinary cases. The *imam*'s extraordinary jurisdiction comes with the liability to honor his contracts. The *imam*'s position as the magistrate is incorporated as a theologico-legal one in the concluding sections of rational theology (*kalam*). Moreover, he also appears extensively in texts of jurisprudence such as the *fatawa* as the figurehead through whom law is enforced in an applicable form for the Muslim State to remain a legal and lawful entity. Theology generated the *imam*'s legal authority that Muslims were bound to accept while jurisprudence generated his legal powers to act within the ambits of the law. The *imam*'s authority is lawful and he himself is bound to law.

This theology had far reaching influence not only on Timurid power, but their conception of time, the created world, the atomistic emergence of incidents, the place of human will and action, and divine causation. The Timurids followed the Ashʿari-Maturidi school of rational theology, which helps us explain the nature of their sovereignty from the perspective of the rational sciences (*maʿqulat*) as well as trace their intellectual culture whose genealogy begins with Timur. Crucial theological concepts remain understudied as they appear in Arabic scholarship intertwined with transmitted and rational sciences.

ʿAdud al-Din Iji (d. 1355), the Shafiʿite jurist and Ashʿari theologian's *Kitab al-mawaqif fi ʿilm al-kalam* is one of the most widely read and commented works of rational theology.[554] Iji's

[554] Alnoor Dhanani, "*Al-Mawāqif fī ʿilm al-kalām* by ʿAḍūd al-Dīn al-Ījī (d. 1355), and Its Commentaries," in *Oxford Handbook of Islamic Philosophy*, eds. Khaled El-Rouayheb and Sabine Schmidtke (Oxford: Oxford University Press, 2017), 375–96. For the transregional context see Lutz Berger, "Interpretations of Ashʿarism and Māturīdism in

work had been the subject of a famous debate between two theologians, Saʿd al-Din Taftazani (d. 1390) and Saiyid ʿAli Jurjani (d. 1413) at Timur's court in Samarqand. Taftazani had been teaching in Samarqand. Jurjani, though, lived in Shiraz and moved to Samarqand following Timur's conquest of Shiraz in 1387. In the debate between the two, Timur adjudicated that Jurjani had won. Later, under Timur's son, Shah Rukh (r. 1405–47) who ruled from Herat, debates on these theological ideas continued under the influence of Taftazani's descendants and students.[555]

Asad Ahmed has recently argued that the growing importance in the reception and commentary tradition on Iji's work seventeenth-century northern India derives from an intellectual genealogy going to Jalal al-Din Dawwani (d. 1502), the Iranian jurist. At Shah Jahan's court, ʿAbd al-Hakim Siyalkoti (d. 1656–7) composed a gloss on Jurjani's commentary of Iji's *Al-mawaqif*. Most notable is Mir Zahid Harawi's (d. 1689–90) supercommentary that gained wide diffusion in Mughal northern Indian towns.[556] Harawi served as *qazi-yi askar* in Agra and Lahore, and later became the *sadr* of Kabul. This expansion in rational theology owes as much to *émigré* Sunni intellectuals to the Mughal Empire from Safavid Iran where they faced persecution.[557]

Mamluk and Ottoman Times," in *The Oxford Handbook of Islamic Theology*, ed. Sabine Schmidtke (Oxford: Oxford University Press, 2016), 693–704; Philipp Bruckmayr, "The Spread and Persistence of Māturīdi Kalām and Underlying Dynamics," *Iran and the Caucus* 13 (2009): 59–92. For a general overview, see Mohammad Ali Amir-Moezzi and Sabine Schmidtke, "Rationalisme et théologie dans le monde musulman médiéval : Bref état des lieux," *Revue de l'histoire des religions* 226, no. 4 (2009): 613–38. Also see Francis Robinson, "Ottomans-Safavids-Mughals: Shared Knowledge and Connective Systems," *Journal of Islamic Studies* 8, no. 2 (1997): 151–84.

[555] On the intellectual climate, see Maria E. Subtelny and Anas B. Khalidov, "The Curriculum of Islamic Higher Learning in Timurid Iran in the Light of the Sunni Revival under Shāh-Rukh," *Journal of the American Oriental Society* 115, no. 2 (1995): 210–36; Beatrice Forbes Manz, *Power, Politics and Religion in Timurid Iran* (Cambridge: Cambridge University Press, 2007), 63–7; İlker Evrim Binbaş, *Intellectual Networks in Timurid Iran: Sharaf Al-Dīn ʿAlī Yazdī and the Islamicate Republic of Letters* (Cambridge: Cambridge University Press, 2016), 93–9.

[556] Asad Q. Ahmed, "The *Mawāqif* of ʿAḍud al-Dīn al-Ījī in India," in *Philosophical Theology in Islam: Later Ashʿarism East and West*, eds. Ayman Shihadeh and Jan Thiele (Leiden: Brill, 2020), 397–412.

[557] 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), 606–24.

To this day, several manuscript copies of commentaries and supercommentaries belonging to ʿAlamgiri courtiers and their entourage survive in repositories. The 5000 *zat*-ranked military officer and governor of Ilahabad, Daʾud Khan Quraishi's copy of Zahid Harawi's supercommentary can still be found in Patna.[558] He had spent a short while in Bihar and founded the suburban agglomeration, Daudnagar near Aurangabad. Muhammad b. ʿAbd al-Aziz completed *Fakhr al-hawashi*, a gloss on Dawwani's commentary in 1706.[559] His father, Shaikh ʿAbd al-ʿAziz (d. 1685) was a close associate related to the Naqshbandi divine, Shaikh ʿAbd al-Latif Burhanpuri. ʿAbd al-ʿAziz was *faujdar* of Sirhind holding 1500/500 *zat* and *savar* rank.[560] For a while, ʿAbd al-ʿAziz was employed at the imperial court under Sadr Rizvi's supervision dealing with the petitions of the religious elite for *madad-i maʿash* grants. A few grant deeds he endorsed on their demands (*ʿarz-i mukarrar*) have survived.[561] Rational theology and jurisprudence were the two fields of enquiry that dominated the intellectual culture of the imperial court in the second half of the seventeenth century in a way they had never before. There was nothing unusual about this trend as it was an eminent product of Timurid heritage going back to Timur and Shah Rukh.

In the concluding parts of *Al-mawaqif*, Iji expands on the necessity to establish a leader (*wujub nasb al-imam*) and lays out the conditions for imamate (*imama*), that is, the postprophetic leadership of the Muslim community. This leadership of the Muslim community is the vicegerency to the Prophet, the vicegerent of God. That is, it is once removed from direct prophetic affiliation

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[558] *Al-hashiya ʿala al-umur al-ʿamma* by Mir Muhammad Zahid Harawi, MS Arabic 540, Khuda Bakhsh Library, Patna.

[559] *Fakhr al-hawashi*, MS Arabic 555, Khuda Bakhsh Library, Patna.

[560] Shah Nawaz Khan, *Maʾasir al-umaraʾ*, vol. 2, 686–8 (Eng. trans., vol. 1, 34–5).

[561] Sayyid Zaheer Husain Jafri, "Two Madad-I-Maʻash Farmans of Aurangzeb from Awadh," *Proceedings of the Indian History Congress* 40 (1979): 302–13.

to the divine. Iji defines the *imam*'s jurisdiction as *riʾasa ʿamma fi umur al-din wa'l-dunya*.[562] The designation *riʾasa ʿamma* poses its own unique problems of translation. Here, I choose to call it "general magistrature" due to two dimensions it encompasses. First, the *imam* is the sole person who bears universal jurisdictional authority throughout his realms and all jurisdictional powers flow from him. This jurisdiction pertains to all affairs—religious (Islam) and temporal. Second, he also acts as a magistrate through legal authority vested in him. As *mujtahid*, he could not only choose between conflicting (*mukhtalif*) legal opinions, but he could also interpret the law as such independently. Also, as the highest legal functionary, he passes judgment on judicial matters concerning his subjects. That is, he reserves to himself the right to act as the final court of appeal. He is the sole person in his realms who could not be called to a judicial court whereas he could summon anybody to two kinds of justice he dispensed through ordinary jurisdiction (*ʿadalat*) and extraordinary jurisdiction (*mazalim*) to adjudicate complaints made against oppression and injustice (*zulm*) committed by state functionaries. Unlike a *qazi* who did not have the right to torture individuals to extract testimony; the *imam*, or a person he designated had the right to torture. Therefore, it is best to understand *riʾasa ʿamma* as both general magistrature and general jurisdiction.

As a counterpart to this theological discussion in the rational sciences (*maʿqulat*), jurisprudence (*fiqh*), one of the transmitted sciences (*manqulat*) expands on the true scope of the *imam*'s special powers and prerogatives. That is, jurisprudence explains the different kinds of choices he has in decision-making keeping in mind state affairs. These concern first and foremost the general foundations of fiscality—the revenue settlement of the lands upon the conquest. By

[562] ʿAdud al-Din Iji, *Kitab al-mawaqif fi ʿilm al-kalam* (Beirut: ʿAlam al-kutub, 1980), 395.

the same token, he has several special powers pertaining to different assignments integral to running the state. He determines land use policy generally, and, more specifically, in the distribution of different kinds of lands: wastelands (*mawat*, literally, deadlands) to subjects for their revivification (*ihyaʾ*) or keeping the common pasturelands freely accessible to prevent their privatization by sale or lease. Crucially, he keeps to himself the right to decide whether the land would be public or private, and further define the distinct uses to which those types of lands could be sold, rented, leased, or gifted. In the judicial functions of the state, he appoints judges across his realms who act as his deputies. These prerogatives left to the *imam* the right to decide livelihood and usufructuary rights.

Peripatetic as the Padishah was, the longitudinal-latitudinal point where he found himself was the true center of Timurid public power. This coordinate point kept moving across its realms with a trail of officers, advisors, and counselors as well as servants (*chela*) carrying the state papers needed to make his imamate work. This form of power revolved around the loop of consultation-decision-execution. An entourage of courtiers and learned scholars who had consultative powers were involved in deliberations inside the imperial court as much as facilitating negotiations with subjects, officers, and rivals. The early-morning privy council (*anjuman-i khass-i ghusalkhana*) was the site of real decision-making unlike the elaborate ceremonial functions of the *divan-i ʿamm* whose transactional purposes were limited. Imperial charters, mandates, warrants, and orders were dispatched through executive powers of the Padishah and his courtly entourage's authorized representative agency. High imperial courtiers, Yar ʿAli Beg, Bahrmand Khan, and Ruh Allah Khan played a powerful role in determining what the Padishah heard and what had to be hidden from him. In turn, he would find ways of figuring out what was hidden. They were authorized

agents with plenipotentiary powers (*mutlaq*) to issue *hasb al-hukm* and *hasb al-amr* (literally, "agreeably to orders" or "as commanded") orders on his behalf.[563]

Under Aurangzeb ʿAlamgir's general jurisdiction and magistrature, his subordinates occupied particular and special jurisdictions, especially coveted public offices of governors or military magistrates paying hefty financial sureties (*hazir zaman*). These delegated powers operated within a nested hierarchy of the military command structure. No doubt, a tension persisted between their respective spheres of competence since they could trespass on one another's official duties. Degrees of autonomy had to be granted as much as their actions carefully balanced under imperial supervision. Subordinates were prone to hiding information and making secret deals. They tried playing for their personal interests or colluding with others and working against one another such as preventing unfavorable orders being pursued and using coercion to prevent the implementation of imperial schemes of power. In Mughal historiography, the interests of various ethnic factions such as Turani, Irani, Khwafi, and Rajput have been studied in their affective ties amongst their own and their rivalries with each other. The agency of Mughal elite officers and their subordinates need not be filtered through dominant parameters of household, ethnicity, clan, and kinship. While kinship relations have been much studied, the daily workings of the empire reveal interactions dominated by calculated interests more than kinship ordering as chronicles might make us believe.

Timurid public power was managed through time coordination of movements and actions of state agents across the empire and the centralization of the information economy and its networks at the imperial court as the nodal agency. Orders, petitions, letters, rescripts, advisory

[563] For a study on ministers, see C. M. Agrawal, *Wazirs of Aurangzeb* (Bodh Gaya: Kanchan Publications, 1978).

notes, agreements, attested documents kept pouring in and out of the imperial court on a daily basis irrespective of where it was camping. The subcontracted postal system (*dak chauki*) knew where to reach the Padishah even in the wilderness and hunting grounds. The imperial court's role was to collect the best, the latest, and the most comprehensive information and reroute them to relevant agents across the empire. That is, Aurangzeb ʿAlamgir kept for himself a macro-picture of the Mughal Empire nobody else could rival in its sheer information-gathering capacity.

He was known to jealously guard his secrets. He spoke little and was a keen listener who responded slowly—rather than someone prone to hastiness, though still impatient as a man—he kept waiting for further inputs that might improve the quality of his decisions.[564] Aurangzeb ʿAlamgir himself once confided that to run the Mughal Empire, the Padishah had to possess the "angel of patience" (*malka-yi tahammul*), and, as we will see below, he certainly had a lot of patience in getting his staff and officers to work for him.[565]

The Political Grammar of Strategy:

Neutralizing Moves in the Game of Stalemate

It is a well-known fact that for several decades from the 1690s onwards, the Rajputs had been caught up suppressing various internal rebels, notably the Jats, around the Yamuna doab.[566] In 1693, Toda, not far from Tonk in today's Rajasthan had been plundered while Bishan Singh

[564] Shah Nawaz Khan, *Maʾasir al-umaraʾ*, vol. 3, 595 (Eng. trans. vol. 2 (1), 31).

[565] Mustaʿidd Khan, *Maʾasir-i ʿalamgiri*, 528 (Eng. trans., 314).

[566] See R. P. Rana, "Agrarian Revolts in Northern India during the Late 17th and Early 18th Century," *Indian Economic and Social History Review* 18, nos. 3-4 (1981): 287–325; Girish Chandra Dwivedi, *The Jats: Their Role in the Mughal Empire* (New Delhi: Low Price Publications, 2003); Shail Mayaram, "Mughal State Formation: The Mewati Counter-perspective," *Indian Economic and Social History Review* 34, no. 2 (1997): 169–97.

had been deputed to quell rebellious peasant groups. Qazi Muhammad Daʾim who served as judge in Toda in the 1690s was caught in the middle of this episode.

In the Kacchawaha archives, we find several documents corroborating conflictual views of the Toda events. At the privy council, Aurangzeb ʿAlamgir was informed of a spy report accusing Rajput soldiers of plundering Toda. Anai Rai, the Rajput *vakil* who managed Delhi affairs from Jaisinghpura had reported that the soldiers had taken the rebel *zamindar*s Shiv Singh and Ram Chandra and other peasants of surrounding villages to task. It all began when one Dalpat Rai complained that nearly 1000 cavalrymen and 2000 footmen had been sent to Toda.[567] A certain Khwaja Ahmad too made his own submission that Anup Singh, Bishan Singh's *gumashta* was plundering Toda. Khwaja Ahmad's *vakil* sent a supplication (*iltimas*) to the imperial court that the Rajput *gumashta* was the real culprit behind these incidents of instigating local *zamindar*s and peasants.[568] Shafiʿ Khan, the *nazim* of Ajmer, sent a letter to the imperial court of which a copy the Rajputs received too. While I have not located the news reports for now, it is quite likely extracts of these events were shared independently by the *vaqiʿa navis* with concerned parties.

The question was not whether Toda had been plundered. That was a known and accepted fact at the imperial court. The calculation that Aurangzeb ʿAlamgir and his entourage stationed nearly 1000 kms away in the Deccan had to make was a complicated one. The local *zamindar*s, Shiv Singh and Ram Chandra as well as their allies had been blamed for rebelling against the state. Were these accusations a mere construct? Or, had something in between plundering and rebellion

[567] "Persian letter from Dalpat Rai," Doc. no. 1671, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*), Bundle no. 9, Rajasthan State Archives, Bikaner.

[568] "*Naql* (copy) of *iltimas* (supplication) sent by Khwaja Ahmad's *vakil* to the imperial court," Doc. no. 548, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*), Bundle no. 2, Rajasthan State Archives, Bikaner.

happened? The Rajput soldiers may have plundered while bringing peasant skirmishes under control. The Rajput contingent itself might have instigated the peasants and pushed them to the brink of frustration. In the guise of taking back control, the cavalry and infantry might have plundered and then tarnished the locals of instigating conflict. Where the truth lies is not just the historian's problem. To determine the truth and bring matters under control was, first and foremost, Aurangzeb ʿAlamgir's problem.

During these disturbances in Toda, clear lines were drawn between two sides of the Mughal elite officers. On one side were the Kacchawaha prince, Bishan Singh, his close associate and Lamba *zamindar*, Thakur Hari Singh, and ʿAqil Khan Razi, the Delhi governor. On the other side were Shafiʿ Khan, the *nazim* of Ajmer and Toda *zamindar*s, Shiv Singh and Ram Chandra. These two alliances were probably formed in the aftermath of the plundering of Toda. However, how stable these alliances were is anybody's guess. As Bishan Singh's *vakil* in Agra, Meghraj suspected, the Delhi governor, ʿAqil Khan Razi might have been playing a trick of being on their side when he was perhaps on the other side really.

The Rajputs raised the bar for their case by getting Toda's judge, Qazi Daʾim on their side. While the Rajputs calculated that bringing the judge to bear witness would carry heavy weight for their assertion that no wrongdoing had been committed, the other side found it would carry even more weight if it was possible to prove the judge himself was one of the accused as an instigator of rebellion. The latter upped the ante a notch higher hoping the judge would be indicted as a culprit. If it could be proven Qazi Daʾim was culpable, then the Rajput case would collapse under its own weight. Further, this would lead to a suspicion of gross misrepresentation (*ghabn fahish*) and deception (*shushsh*) on the Rajput part.

For the imperial court, these local incidents had to be carefully managed. Sometimes, there was suspicion, and perhaps some truth that local judges supported rebels. At least, local interests at play might seem like tacit support for rebellion against the state. Whether the individual was complicit or not had to be proven and judicial officials could get caught in the web of political partisanship between military elites. Qazi Daʾim was put in the worst of the possible scenarios. On the one hand, he had been called as a witness to Toda plunder. On the other hand, he had been accused of helping the rebels. Was he complicit in supporting the rebels or a mere witness to the incidents or both? Perhaps, he was an accused who was also witness to the case. The *qazi* being accused was no minor matter—an accusation of rebellion against the *imam*'s deputy was a highly inflammable charge.

Bahrmand Khan who was in Aurangabad had received orders from the highest magistrate of law to issue a formal summons (*ittilaʿ*). On August 24, Meghraj in Agra noted that Bahrmand Khan had sent the summons to Shafiʿ Khan for the arrest of Shiv Singh and Ram Chandra, and other rebels (*mufsidan*). They were asked to surrender themselves for a legal enquiry to be conducted into allegations of rebellion.[569] This information economy kept circulating and flowing through various channels. A week later, Pancholi Jag Jivan Das who was in the loop of the activities at the imperial court sent a letter from Aurangabad to Hari Singh in Lamba.[570] On matters of high treason, rebellion, and sedition, military officers acted as magistrates. They interrogated culprits, and crucially, tortured them to retrieve evidence. The *qazi*'s jurisdiction being ordinary in nature, he did not have powers to use such methods to extract testimony.

[569] "Rajasthani letter from Meghraj to Hari Singh, *zamindar* of Lamba dated bhadrapada sudi 3, 1750 VS (August 24, 1693)," Doc. no. 129, *Khatuta hindi ahalakarana*, Bundle no. 1, Rajasthan State Archives, Bikaner.

[570] "Rajasthani letter from Pancholi Jag Jivan Das to Hari Singh, *zamindar* of Lamba dated bhadrapada sudi 11, 1750 VS (August 31, 1693)," Doc. no. 133, *Khatuta hindi ahalakarana*, Bundle no. 1, Rajasthan State Archives, Bikaner.

Devi Das from the Rajput chancery in Amer and the local revenue-settlement officer, Qanungo Sada Ram were active in communicating what they had learnt to the *zamindar* of Lamba, Hari Singh. Toda was barely 50 kms from Lamba. Hence, it was crucial Hari Singh was in the know of affairs that might easily spread out of control and reach his *zamindari*. On November 2, Qanungo Sada Ram informed him that Bishan Singh had sent a letter to Shafiʿ Khan to defuse the matter. However. Bahrmand Khan had already sent the summons to arrest one of the Toda *zamindar*s, Ram Chandra.[571] A month later, on December 11 Sada Ram mentioned that he would send more Toda information with Kesar Khan.[572] Devi Das was also in touch with Hari Singh noting that Bahrmand Khan was in touch with Bishan Singh. Bahrmand Khan was helping the Rajputs get out of trouble by sending a letter of recommendation (*sifarish*) supporting their case to Yar ʿAli Beg. On January 24, Devi Das also communicated with the Rajput *divan*, Bhaiya Prayag Das. At around the same time, Qanungo Sada Ram informed Hari Singh that Muhtamid Khan had taken charge as governor of Ajmer and that Yar ʿAli Beg had not yet submitted Baqi Khan's sealed report to Aurangzeb ʿAlamgir.

Ajmer's military administrator (*nazim*), Baqi Khan had called the rebels (*mufsidan*) to Ajmer for a meeting to see what had happened and kept investigating this matter. The Rajput *gumashta*, Anup Singh too would be called. By November 8, Shafiʿ Khan had tried to get amnesty for the Toda *zamindar*s Shiv Singh and Ram Chandra, which did not work, and they were arrested. It seems Shafiʿ Khan at least was trying to save the *zamindar*s and making Qazi Daʾim the accused. On December 12, Aurangzeb ʿAlamgir's displeasure on the Toda events was made known to

[571] Rajasthani letter from Qanungo Sada Ram to Hari Singh, *zamindar* of Lamba dated kartika sudi 15, 1693 VS (November 2, 1693)," Doc. no. 147, *Khatuta hindi ahalakarana*, Bundle no. 1, Rajasthan State Archives, Bikaner.

[572] Rajasthani letter from Qanungo Sada Ram to Hari Singh, *zamindar* of Lamba dated pausha badi 9, 1750 VS (December 11, 1693)," Doc. no. 610, *Khatuta hindi ahalakarana*, Bundle no. 1, Rajasthan State Archives, Bikaner.

Bishan Singh.[573] The Rajput prince had been recently successful in conquering back the Barah Fort south of Etawah at the confluence of the Chambal and the Yamuna rivers. These achievements had brought the Padishah much happiness. But, as Meghraj noted, that appreciation for the Rajputs had long receded from his mind in the aftermath of the Toda events. Though patient, it was not unusual for the Padishah to be frustrated or extremely annoyed. Success meant much to him and he was impatient with failure. Perhaps, this was the norm as daily he received reports of something not working up to his expectations somewhere in this empire.

On January 3, Meghraj went on to report various pieces of gossip he had heard in Agra and did not forget to add that the Rajput side had lost a land encroachment case against the Rasulpur weavers at Qazi Wali's court.[574] In this context, Meghraj suggested the time was best to smear Shafiʿ Khan and bring to light all his misdeeds at the imperial court, that is, to turn the tables and upend the plans of the other side. Aurangzeb ʿAlamgir had deputed Sambhar's *faujdar*, Baqi Khan to interrogate the inhabitants of Toda and nearby villages. Meghraj suggested Bishan Singh write to ʿAqil Khan Razi, Shahjahanabad's governor so that he could win Baqi Khan's trust and perhaps manipulate the matter. What Baqi Khan would write in his secret report to the Padishah could not be controlled but at least the narrative could be made to fit one's side by finding out his broader intentions.

On 21 February 1694, Qazi Daʾim was called as a witness to the plunder of Toda *pargana* following which investigation, as revealed a month later in the regular letter from Meghraj, the

[573] "Persian *vakil* report from Meghraj to Bishan Singh dated 23 rabiʿ al-thani 1105 AH (December 12, 1693)," Doc. no. 847, *Persian Vakil Reports*, Bundle no. 1, Rajasthan State Archives, Bikaner.

[574] "Persian *vakil* report from Meghraj to Bishan Singh dated 16 jumada al-awwal 1105 AH (January 3, 1694)," Doc. no. 644, *Persian Vakil Reports*, Bundle no. 1, Rajasthan State Archives, Bikaner.

Rajput *vakil* in Agra's Jaisinghpura (today's Jaipur House Colony) to Bishan Singh.[575] Investigations were being pursued in Agra. Within a month matters had flared up so much that Qazi Daʾim seems to have had no other option but travel from Toda to Agra. By March 25, Meghraj sent another letter noting this time that Shafiʿ Khan had formally complained to the Padishah himself that Qazi Daʾim had taken the side of the rebels and supported them during the Rajput skirmishes in Toda.[576] Three days later, on March 28, Bishan Singh was sent a petition stating that Shafiʿ Khan, *nazim* of Ajmer had reported to the Padishah that Qazi Daʾim might have at least abetted the rebels' violence if not conspired with them. Meghraj went on to add that the *qazi* had come to meet him in connection with his case and he had introduced him to Jumdat al-Mulk. By April 8, Meghraj had sent in a supplication (*iltimas*) on Qazi Daʾim's behalf to Prince ʿAzim al-Din countering all claims of indicting him and tarnishing his reputation.[577] This was important as the Rajputs had called Qazi Daʾim as witness and getting him the necessary introductions with the grandees was vital to secure his position. Meghraj helped the judge get all necessary introductions with the grandees and the who's who of the Mughal elite to prepare the terrain. Meghraj, no doubt was also trying to show off to Bishan Singh that he could manage Rajput affairs with skill. Meghraj informed that he had met the Chief Judge (*Aqza al-quzat*), Muhammad ʿAbd Allah. Meghraj found his consent (*ittifaq*) on Qazi Daʾim's situation particularly comforting. The Toda judge had also obtained a meeting at the "exalted sublime audience" (*huzur ʿala mutaʿala*) of Prince Muhammad

[575] "Persian *vakil* report from Meghraj to Bishan Singh dated 6 rajab 1105 AH (February 21, 1694)," Doc. no. 929, *Persian Vakil Reports*, Bundle no. 1, Rajasthan State Archives, Bikaner.

[576] "Persian *vakil* report from Meghraj to Bishan Singh dated 11 shaʿban 1105 AH (March 25, 1694)," Doc. no. 412, *Persian Vakil Reports*, Bundle no. 1, Rajasthan State Archives, Bikaner.

[577] "Persian *vakil* report from Meghraj to Bishan Singh dated 22 shaʿban 1105 AH (April 8, 1694)," Doc. no. 458, *Persian Vakil Reports*, Bundle no. 1, Rajasthan State Archives, Bikaner.

Muʿazzam. By April 8, Meghraj had come to know that Shafiʿ Khan had made a formal complaint (*shikayat*) against the *qazi* making him one of the accused in the plunder.

Meghraj and others were waiting to know what would happen when the secret reports were submitted. In Amer and Agra, they knew that the Padishah's trusted counselor, Yar ʿAli Beg in the Deccan was still waiting to determine when the right time and the right mood was to submit the report for his master's perusal. Any manipulations, if not overt coercion, at the least some form of convincing Baqi Khan to write a report favorable or something not tarnishing their standing had been attempted earlier. Moreover, much of this happened during Ramadan (April-May 1694) when the Padishah had to practice restraint in his behavior but also breaking fast and feasting in a collective environment charged with these emotions.

What Shafiʿ Khan and Baqi Khan included in their secret reports we shall never know as it was meant for the Padishah's eyes. Upon breaking the seal and reading, it was customary for him to destroy evidence and not make anybody else privy to what was meant for him and him alone. Secrecy is perhaps the limit of writing the history of sovereignty: can the historian's craft cross this threshold line the Padishah drew himself? Timurid statecraft's information economy is more revealing as different state actors shared and exchanged what they knew with each other while also influencing and countering each other's moves. In the Mughal Empire, much ink was spilt in keeping oneself up to date of imperial and local matters with a flurry of correspondence that travelled at a lightning speed between Aurangabad, Agra, Shahjahanabad, Lamba, Amer, Ajmer, and Toda. A continuous daily chain of orders, letters, petitions, reports, events were kept flowing in order not to break this and seeing that traffic between the *thana*s was not broken or slowed down. This is only one example we have taken to show that Timurid public power could

work only if it manifested itself at the local level *as* public power. The local was not opposed to the imperial; different spheres of competence were juxtaposed with one another.

The rebels seem to have been executed and Qazi Daʾim was released. Even though for now, we are uncertain on what grounds the question of rebellion had been resolved, we will see later that Qazi Daʾim was reinstated and went back to his judgeship at Toda. The highest magistrate of the Mughal Empire had sent a legal summons explaining the grounds on which an arrest warrant had been issued. Each of these documents went through several iterations of true attested copies given to all officers involved in getting Toda *zamindar*s, Shiv Singh and Ram Chandra arrested. This obsessive bureaucracy meant many had seen a true attested copy made by competent authorities though few had access to the original.

In the Persian game of chess (*shatranj*) the Mughals played for strategy, three kinds of outcomes, all centered around the king, are possible: *shah mat* (checkmate), *shah jam* (stalemate) and *shah qaʾim* (steadfast king).[578] *Siyasa* too was such a strategy wherein checkmate would seal the game with the king's deposition. Unlike modern standard chess, in Persian chess, *shah jam* (stalemate) does not lead to a draw of the game—the end of possible legal moves (*harakat*). Perhaps Persian-style stalemate incorporated the historical reality of its times that the king had to still have legal moves to continue moving his pawns to finish the game victorious or defeated. Stalemate was resolved by additional moves to arrive at *shah qaʾim*—the king remaining steadfast against different countervailing pressures. Before they reached a point of crisis, he had to neutralize them by drawing upon equal forces and diffusing the underlying political tensions among his military officers and resentment on the ground before they reached a tipping point. Aurangzeb

[578] N. Bland, "On the Persian Game of Chess," *The Journal of the Royal Asiatic Society of Great Britain and Ireland* 13 (1852): 1–70.

ʿAlamgir was one of the great masters of *siyasa*, the strategic vision of statecraft that kept these multiple overlapping and inter-networked jurisdictions together.

The *imam*'s Prerogatives on Rent-Free Land Grants: *madad-i maʿash* and *brahmadeya*

The Timurids combined legal doctrines on loan (*ʿariya*) and wastelands (*mawat*) in creating *madad-i maʿash* grants given as a largesse to religious communities. In the Chapter on wastelands (*kitab al-mawat*), the *FA* outlines this prerogative as the "discourse on what the *imam* retains in the appropriation of wastelands" (*bayan ma yamlik al-imam min al-tasarruf fi'l-mawat*).[579] Wastelands have no owner except the state that can grant them rent-free or for a rent for their revivification (*ihyaʾ*). The jurists further explain the kind of claims the possession of wastelands could generate. Lands must meet three minimum conditions to be classified as wastelands:

(1) land situated outside city limits (*ʿard kharij al-balad*)

(2) nobody possesses complete ownership (*lam takun malikan li-ahad*)

(3) nobody has particular claims on the said land (*wa la haqqan lahu khassan*)

By the late nineteenth century, though these provisions on wastelands had disappeared from British India's legal landscape, they survived in Article 1272 of the Ottoman Civil Code, *Mecelle* that came into force in 1877:

"If the Sultan or his representative gives permission to any person to vivify land on the terms that he shall merely make use of such land without becoming owner thereof, such person

[579] Nizam et al., *FA*, vol. 5, 469.

may deal with the land in the way he has been authorised to do, *but does not become the absolute owner thereof*."[580]

The Timurid Padishahs had opted for this legal option and retained the *imam*'s prerogative to distribute farmlands and wastelands to the *ʿulamaʾ* and non-Muslim religious establishments. Lands adjacent to the cities were not included as lands just outside city limits (*ʿard kharij al-balad*) were needed for waste management, garbage dumps and other sanitary purposes. The jurists thus prevented the privatization of lands allotted for public utility.

Often the Timurids gave grants that partly included cultivable land (*zamin-i marzuʿ* or *zamin-i ziraʿat*) and wastelands (*zamin-i uftada* or *zamin-i banjar*). This way of mixing reduced conceding too many high-quality lands that yielded higher revenues. Also, wastelands would not always be given rent-free and sometimes only for a three-year period when the revivification could happen by cultivation. In accounting language, they appeared as "outside estimation" (*kharij-i jamaʾ*) until the end of the three-year period when the lands again accrued rent. If *madad-i maʿash* had been given rent-free until their lapse, they became "without estimation" (*siva-yi jamaʾ*). Each *suba* contained detailed lists of the ordinances on all land grants (*ahkam-i madad-i maʿash*) kept outside the revenue valuation. Since these lands were found across the empire, routine advisories were sent to *jagirdar*s not to annoy the subjects and ensure their solicitude (*qadaghan*) in the cultivation of wastelands.[581]

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[580] *Mecelle*, Art. 1272. Emphasis added. For a recent study of the *Mecelle*, see Samy Ayoub, "The *Mecelle*, Sharia, and the Ottoman State: Fashioning and Refashioning of Islamic Law in the Nineteenth and Twentieth Centuries," *Journal of the Ottoman and Turkish Studies Association* 2, no. 1 (2015): 121–46.

[581] Khan, *Selected Waqai*, 134. *Qadaghan* is a Chaghatay word meaning command, solicitude, or care. On the usage of Chaghatay terms in other aspects of Mughal fiscality, see Srivastava, *Siyaqnama*, 250. A proper study of Chaghatay in the Mughal chancery remains wanting. On similar usages in Iran, see Heribert Busse, *Untersuchungen zum islamischen Kanzleiwesen an Hand turkmenischer und safawidischer Urkunden* (Cairo: Kommissionsverlag Sirović Bookshop, 1959), 40.

One of the major misinterpretations of fiscality in twentieth-century Mughal historiography has ended up misrepresenting Aurangzeb ʿAlamgir's actions. In an oft-cited *farman*, historians have claimed that *madad-i maʿash* grants to the learned scholars had been rendered "hereditary" in 1690.[582] Irfan Habib analyzes it as "completely hereditary…its inheritance was to be governed by imperial orders, and not (by implication) by the *Sharīʿat*."[583] Muzaffar Alam argues that this act proves "Aurangzeb's concession to the orthodox elements…the increasing pressure on the state by the *ulama*."[584] Christopher Bayly extends the point further: "This policy appears to have been an element in *Aurangzeb's 'tilt' towards Islam* and an effort to build up local support against the power of 'refractory' Hindu zamindars."[585] These views have been widely repeated for over half a century when no legal basis exists in the intention of the text of the 1690 *farman* to argue for anything to this effect.

Such a sweeping ideological portrayal given to the Padishah's actions is far removed from Mughal fiscality, legality, and documentary style. Four different errors have been made: misinterpretation of the actual decision, the Hanafi legal provisions, the logic of Timurid decision-making, and the rhetorical gestures (*balagha*) of imperial commanding style in *farman*s. *Madad-i maʿash* is a benevolent loan (*ʿariya*) made without any consideration in return. The imperial chancery had chosen Marghinani's legal opinion that the term *ʿariya* be explicitly inserted to give the strong sense of the legal fact that the grant being made was a loan of the land to benefit from

[582] For copies of the *farman*, see K. P. Srivastava, ed., *Mughal Farmans (1540 A. D. to 1706 A. D.)*, vol. 1 (Lucknow: Uttar Pradesh State Archives, 1974).

[583] Habib, *The Agrarian*, 351–2. Also see Rafat M. Bilgrami, *Religious and Quasi-Religious Departments of the Mughal Period 1556-1707* (New Delhi: Munshiram Manoharlal, 1984), 84.

[584] Alam, *The Crisis*, 116–7.

[585] Bayly, "The Pre-History," 191. Emphasis added.

its usufruct and not the land itself. Since the legal object pertained to rights to usufruct or what Marghinani, following Abu Hanifa calls *itʿam* (feeding), it is a benevolence for mere subsistence alone that is even lower than the minimal ownership of usufruct (*tasarruf*).[586] Indeed, this use of *ʿariya* was precisely the opposite of what modern historians have claimed. It was to make clear the legal conditions of the benefits as pure largesse. Sometimes, these terms were added depending on who oversaw the department, their personal legal choices, and the contextual circumstances.

This mistake pertains to not recognizing the difference between the continuance of a grant to later descendants as being entirely different from inheritance (*faraʾid*) in Hanafi law. Inheritance applies to *tamlik* property with full rights to ownership and possession. The *madad-i maʿash* grant transfers the land possession (*qabd*) to the grantee and cedes ownership to usufruct (*tasarruf*) with land ownership left with the Mughal State. Mughal *farman*s for grants came with a rhetorical saying that the grant would hopefully continue "progeny after progeny" (*naslan baʿd nasl*). This phrase from the imperial chancery has been misinterpreted in modern historiography as meaning inheritance. The Timurid Padishahs promised their grantees that they would continue to make grants in the future if and only if they remained loyal to state interests and showed gratitude for the largesse. This was a sovereign assurance from the Timurids to continue to shower their benevolence if the grantee and his or her family conducted themselves appropriately in their religious obligations as Muslims. As families with significant clout, education, and resources, these grants tacitly expected them to regulate proper conduct among Muslim communities in their locales. This rhetorical flourish (*balagha*) is not a literal legal clause or binding condition (*shart*) of the *ʿariya* contract.[587] Moreover, the assumption of making all grants hereditary is based on

[586] Marghinani, *The Hedaya*, 482.

[587] A legal clause is open to contestation or litigation within the contract, which cannot be done for a rhetorical gesture. A study of the interrelationship between law and rhetoric in Mughal chancery documents remains wanting. Variants

imagining the Timurid Padishahs like European monarchs who issued "proclamations" granting and rescinding rights of tolerance and persecution of religious belief to all subjects in their realms. Aurangzeb ʿAlamgir had no such "divine right" to life and death. Since an imperial charter is always addressed to a particular individual to carve out his or her proprietary claim, how has it been assumed that all grants became hereditary? For such a drastic move to happen, there was only one way to do it in the Mughal Empire: prepare new imperial charters granting proprietary rights for each and every grantee across the territories and send it to them. Nothing to that effect had been undertaken as *madad-i maʿash* grants were given well into the eighteenth century.

Henry Miers Elliot (1808–53) had realized the precise meaning of the phrase "progeny after progeny" when he had dealt with Timurid imperial documents while working as a settlement officer at the Moradabad Collectorate finalizing British revenue settlements in what had once been the heartlands of the Mughal Empire. Elliot's daily experience handling these documents and interacting with grantees gave him the opportunity to offer one of the most trenchant critiques of the British mismanagement of Mughal agrarian settlements in an anonymous essay, "On the Resumption of Rent-free Tenures." As a low-level officer in 1835, Elliot was in no position to reveal his identity while voicing his opinion that scathingly attacked the EIC's revenue regulations. In a footnote, Elliot went on to note the consequences that misreading this phrase from Timurid documentary rhetoric as inheritance had on skewing property relations and disrupting rightful claimants: "In ignorance of this custom, a Public Officer lately resumed a whole Village, because the Sunnud of the first grantor was not forth coming; - although an authentic Grant of a later Emperor was produced, and the grantee had retained possession for sixty years."[588] Perhaps as a

of *shart* from Islamic legal contractual culture are commonly used even today to mean terms and conditions (*shart*, *shartu*, *sharattu*).

[588] Anonymous, "On the Resumption of Rent-free Tenures," *The Meerut Universal Magazine* 1 (1835): 369. For the

harbinger of the 1857 revolt, Elliot voiced the deep resentment that existed against British revenue procedures: "Our soldiers who are now serving in distant provinces have many of them, great interests at stake, and will not fail to communicate their dissatisfaction to all around them, in the event of any glaring injustice—and many more than those who derive profit from rent-free land,—are deeply interested in the cause."[589] Criticizing many arbitrary decisions of failing to understand the logic of these grants, Elliot added, "Alumgeer *had a more accurate knowledge* of the nature of a rent-free grant than the Madras Chief Justice had."[590]

Aurangzeb ʿAlamgir's decision was very much within the *sharīʿa* as prerogatives granted to him in theologico-legal authority of imamate. All his imperial charters on *madad-i maʿash* had been drafted as per Hanafi legal provisions on *ʿariya* and *mawat*. Since Muslim State interest was its own, and, at times even conflictual with private Muslim interests, Timurid public power made itself clear that it did not wish to serve those interests. Whoever had drafted imperial charters conveyed the *imam*'s sense of rectitude that he would not budge to Muslim religious elites behaving as countervailing forces to his legal authority and creating alternative centers of power. As the *FA* says, when land is the legal object of an *ʿariya* contract, restrictive interpretations apply to its grant unlike in contracts of sale or lease. Neither the land nor the usufruct is the strict legal object intended behind the *madad-i maʿash*. The land is given to merely "eat out of its usufruct" for cultivating the grantee's fidelity (*tasaduqan*) and remains open to annulment (*radd*) if not

identification of the author, I am relying on Abu Mohammad Waheeduzzaman, "Land Resumption in Bengal, 1819-1846" (PhD diss., University of London, 1969), 286. However, parts of this essay had also been published in Harvey Tuckett, *The Indian Revenue System as it is* (London: Smith, Elder & Co., 1840).

[589] Anonymous, "On the Resumption," 374.

[590] Ibid., 371. Emphasis added.

reciprocated by loyalty.[591] From an ethical perspective, the *farman* voices the legal fact that the learned scholars had no real claim on the Mughal State except its beneficence of feeding (*itʿam*) them out of sheer kindness—a status lower than Hindustan's rent-paying peasants who had a greater claim to the usufruct of the land they tilled as state tenants. These rhetorical and legal nuances underneath the surface of the text are difficult to perceive if read as documentary "evidence" whereas the learned scholars who received those grants would have appreciated the deeper intentions made known to them by the imperial charter in subtle and not so subtle ways as they too were trained in the Islamic rational and transmitted sciences.[592]

Aurangzeb ʿAlamgir had not bent to any "pressure" from the learned scholars, nor had he "tilted towards Islam." The *imam* had retained his prerogatives as per law like all his ancestors and shown the learned scholars what he thought their rightful place was. Ironically, documents that were deeply understood to have legal value for claims have ended up being justified as motivated by religious ideology. If his decisions took such erratic turns, that would have left Mughal subjects thoroughly confused and caused them to sound alarm at chaotic imperial procedures. This is again because historians have analyzed the *imam*'s powers as arbitrary kingly powers rather than binding contracts of Hanafi law as they were. Misreading one document, the modern assumption made is that being "orthodox," Aurangzeb ʿAlamgir placated the *ʿulamaʾ* against the Hindu *zamindar*s, i.e., a proto-communal rationality attributed to the precolonial Muslim State as instigating Hindu-Muslim conflict. The 1690 *farman* is a routine and inconsequential imperial charter that changed

[591] Nizam et al., *FA*, vol. 4, 416.

[592] Since many of these grants had been renewed over generations and remained *de facto* under the same families, in historiography, they have been considered virtually hereditary. However, for seventeenth-century grantees, Timurid emphasis that they should never take their grants for granted would have appeared more clearly as the ever-present danger of revocation for insufficient loyalty. This was a subtle ethical economy of controlling greed and rentier behavior.

nothing of religious (*din*) and secular (*dunya*) policy in the Mughal Empire. No historical causality, religious ideology, or Muslim special interest groups and their lobbying can be attached to this document as historians have done since no unique concession had been granted—instead, strong legal and ethical restrictions of the opposite nature had been rendered explicit—by the Timurid imperial court in the first place.[593]

In addition to such grants, several ordinary individuals also received regular pensions detailed in *fihrist-i ruzinadaran-i muzakkarat* (list of the male recipients on daily allowance), *fihrist-i ruzinadaran-i muʾannasat* (list of female recipients on daily allowance), and *fihrist-i arbab-i vazaʾif* (list of stipendiaries). In 1653, ʿAʾisha's grandmother, Roshan died in Burhanpur. Together, the two had been granted a pension of half a rupee a day by Prince Aurangzeb. As the scribe noted in his rhetorical way, ʿAʾisha was still "bound to life" (*dar qaid-i hayat*) and Roshan, wife of Habib (*kuch-i Habib*) was dead. ʿAʾisha submitted a death certificate. On the same day, the statement of facts (*haqiqat*) was prepared, and she was given half the portion of the original pension (*du hissa-yi qist-i fauti*).[594] The Burhanpur scribe transcribed the full details of the original *nishan* issued by the prince, Shahjahanabad's reapproval of the matter, and the presence of the defunct person's granddaughter (*navasi-yi mutavaffa*). Six different officials prepared their annotations (*sharh*). Even a quarter rupee required pages of documents, attestations, approvals, clarifications, and ʿAʾisha's obligation to report her grandmother's death to the concerned official so that a change could be made. In Mughal procedure and Hanafi law, it became the descendant's

[593] Equally, any revocation of grants also required the imperial court to consider the claims of others on the said lands. Learned scholars themselves were not farmers. Busy with religious matters, they did not till the land but subcontracted them to *pai kasht* and *khud kasht* peasants. Any changes had to keep in mind unintended casualties of imperial actions that could make peasants' livelihood a collateral damage of their orders.

[594] "*Naql* (copy) of a *nishan* with annotations dated 16 muharram 1064 AH (November 27, 1653)," Khan, *Selected Documents of Shah Jahan's Reign*, 184-6.

liability to inform the concerned authorities of the pensioner's death. Or else, she would be tried for fraud against the state, her grant annulled, and any falsely appropriated pension of her grandmother recovered.

Cases of misdemeanor and non-respect for Muslim religious obligations came regularly to the imperial court on which the Padishah had restraining powers of serving an injunction. On June 27, 1681, the Chief Paymaster (*mir bakhshi*), Asad Khan sent a restraining injunction to Muhammad Tahir informing him that Pir Muhammad, Shaikh ʿInayat Allah's *vakil* had represented to the Padishah on the trusteeship (*tauliyat*) of the mausoleum of Shah Madar in Makanpur. Both local agents and pilgrims were found intoxicated, not offering prayers or keeping fasts as much as swindling the donation (*nazr*) offered at the *dargah*. The matter that the local censor (*khidmat-i ihtisab*) had failed in enforcing discipline had been taken with utmost seriousness at the privy council. Muhammad Tahir was asked to discipline all concerned while enjoining them to perform their requisite religious obligations. Asad Khan arranged the supply of additional cavalrymen and footmen to restrain pilgrims from committing such acts.[595] Regularly, grants to Sufi *dargah*s and *khanqah*s were readjusted. Aurangzeb ʿAlamgir had reduced grants even to the Ajmer *dargah* on several occasions when corrupt *khadim*s had been found embezzling money. The *imam*'s postprophetic leadership was one of disciplining Muslims—more so when grants from state property were given and orienting them in the right path of their religious obligations but also secular ones like preventing free-ridership on the Muslim State's back.

A counterpart to rent-free grants is what Mughal military officers and elites regularly made. Since they did not have the right to grant land for usufructuary rights, they gave grain and cash

[595] "*Parvana* from Asad Khan to Muhammad Tahir dated 10 jumada al-thani julus 24/1092 AH (June 27, 1681)," Doc. no. 2703/27, National Archives of India, New Delhi.

grants notarized in the *qazi*'s presence. In southern India, the *ksatriya* kings had continued to make *brahmadeya* land grants to the Brahmins as part of the ritual *brahma-ksatra* alliance. Not noted is the fact that *brahmadeya* was still practiced in northern India. Under Timurid rule, the *brahmadeya* had transformed from being a land grant to a cash or grain grant (*dana*) in accordance with Hanafi law, which prohibited anybody other than the *imam* to grant land. The grants the Timurid Padishahs gave to Hindu establishments were *madad-i maʿash* and not *brahmadeya* as they were not treated with the ritual status of a *ksatriya* king.

Har Kishan Brahman made a request to Jai Singh II for a grant, which was directed to Mukhtar Khan who allocated 12 *man*s of grain on each harvest as maintenance to be collected from the *mutasaddi*s of Muhammadpur. Har Kishan's right was endorsed with effect from 1701 for three years by the *qazi* who noted his brahmin *jati* affiliation as *qaum-i zunnardar*.[596] Upon its lapse, Har Kishan once again made a request that was again renewed by Shayista Khan as 10 *seer*s of grain on each harvest from every village of Muhammadpur *pargana*. Shayista Khan's agents verified the old *parvana* and adjusted the terms and conditions depending on the revenue situation and demands of other claimants. This right too was endorsed by the *qazi* in 1704.[597] Har Kishan was exempted from *jizya* as he had no earned income to pay the tax. State agents issued *parvana*s for collecting grain that Har Kishan would have further distributed to his household, clients, and priestly castes. Jai Singh II's *brahmadeya* as a *ksatriya* prince was routed through the *qazi* as the *imam*'s deputy (*naʾib*) in judicial functions. True attested copies were addressed to the Rajput

[596] "*Parvana* issued by Mukhtar Khan dated 1109 AH/1701," Doc. no. 256, *Mutapharrika kagajata pharasi Jayapura*, Bundle no. 14, Rajasthan State Archives, Bikaner.

[597] "*Parvana* issued by Shayista Khan dated 1112 AH/1704," Doc. no. 132, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*), Bundle no. 8, Rajasthan State Archives, Bikaner.

prince as an *amir* of the Muslim State. His chancery kept them safely for bureaucratic procedures and accounting adjustments. Politico-theological concepts of both religions coexisted and worked in tandem. Such instances are so pervasive in the Kacchawaha Rajput archives for several regions of northern and central India that we can infer that various *raja*s and *zamindar*s made them virtually in every *pargana* of Hindustan.

To set the historical record straight, we have shown through a handful of cases that the second half of the seventeenth century saw no radical change and largesse was a common feature.[598] The Padishah, officially contracted with his ordinary subjects, even those like ʿAʾisha for a paltry sum of a quarter rupee a day. This way of directly speaking to them would have created a deeper sense of loyalty. A wide range of grants as well as the *brahmadeya* were all legally done as per the Hanafi law of the land. Muslims gave grants to Hindus, Hindus gave to Muslims and helped each other give rewards, benefits, and *ex gratia* among themselves and each other. Different caste-clan hierarchies determined who the beneficiaries were as Mughal society had its own fault lines whereas the interconnected nature of polity and economy crisscrossed the empire. In 1694, Qazi Muhammad Saʿid, Qazi Muhammad Mah's son and successor to Amer's judgeship wrote to the Rajput *divan*, Bhaiya Prayag Das congratulating Bishan Singh on the birth of his second son, Kunwar Bijay Singh (Sawai Jai Singh II's brother). As was customary, Qazi Saʿid also asked for some reward (*bakhshish*) for himself and his court officials to celebrate this auspicious occasion.[599] Widows and *faqir*s too petitioned for favors. When highway robbers thrashed ʿAli Akbar, a *faqir*,

[598] On grants to some Hindu groups, see Brijinder Nath Goswamy and Jagtar Singh Grewal, *The Mughals and the Jogis of Jakhbar. Some Madad-i-Maʿāsh and other Documents* (Simla: Indian Institute of Advanced Study, 1967).

[599] "Persian Letter from Qazi Muhammad Saʿid to Bhaiya Prayag Das dated 1105 AH (1694)," Doc. no. 506, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*)," Bundle no. 3, Rajasthan State Archives, Bikaner. Such requests were made when sons were born given the general male preference in Mughal society.

and stole his horse and clothes, the highway officers issued him a warrant (*parvanagi*) for 50 rupees. ʿAli Akbar got an *ex-gratia* payment from the Rajput chancery upon its presentation.[600] On sundry duties of running errands, taking correspondence, and acting as go-betweens, Rajputs, Mughal princes, city officers, and others would not forget to give a *tanka* or two or even send a note to the other party asking them to offer some sort of a *bakhshish* in cash or kind as a token of gratitude.

Public Welfare through *mazalim* Jurisdiction:

Aristotelian Distributive and Commutative Justice

The Mughal State relied on an Aristotelian distributive justice of determining land revenue and diving its shares between the state (*khalisa*), its military officers (*jagir*), and the agrarian communities. A meagre amount was redistributed for charitable purposes. That still left the state to render commutative justice by being responsive to unfavorable ground-level realities. Injustice (*zulm*) was no uncommon feature of Mughal civilian life. Institutional arrangements were, moreover, necessary to strike a balance given the self-evident power asymmetries, unevenness of caste-clan hierarchies as much as income and wealth inequalities of Mughal social landscape. The rich easily abused the poor; armed state agents and unruly soldiers very often threatened, and, at times resorted to beating up unarmed merchants, weavers, peasants, *banjara* traders, and ordinary folk. Such violence could lead to injury and even death. Though they were equal in the eyes of Hanafi law, social and political realities necessitated checks and balances. Even state agents

[600] "*Parvanagi* issued to ʿAli Akbar, undated," Doc. no. 165, *Mutapharrika ahalakarana bila tarikha*, Bundle no. 6a, Rajasthan State Archives, Bikaner.

manipulated public power for personal ends. Independent verifications made through news reporters (*vaqiʿa nigar*) and intelligence reporters (*savanih nigar*)—who in turn could be coerced or threatened by local officials and military officers—were one part of the information economy for the imperial court to be responsive to these daily problems.

From the perspective of rendering justice to their subjects, the Timurids had several institutional mechanisms. The Padishah conducted his extraordinary judicial proceedings: *mazalim*.[601] Matthieu Tillier defines this Islamic legal institution as "*radd al-mazalim* can broadly be understood as the ruler's duty to ensure the achievement of equity and to remedy injustices, whether caused by individuals or by state agents."[602] The *mazalim* outlined by Mawardi (d. 1058) for adjudicating complaints made against the oppression committed by state functionaries was conducted both at the imperial court and at the city forts by military governors and magistrates in their tribunals (*divan*). Writing in the snowy winters of Srinagar, Fani Kashmiri argued that under Aurangzeb ʿAlamgir's reign, oppression (*zulm*) melted like snow (*barf*) exposed to the heat of the sun.[603] In reality, it took longer to get justice rendered. It was frustratingly slow for the Padishah who was anxious of his own self-esteem as a just ruler (*ʿadil*). Mughal subjects felt their own chagrin of being exposed to compulsion (*takida* or *taʾkid*) and misdemeanor (colloquially, *gaira*

[601] See H. F. Amedroz, "The Mazalim Jurisdiction in the Ahkam Sultaniyya of Mawardi," *Journal of the Royal Asiatic Society of Great Britain and Ireland* (1911): 635–74. Also see Jørgen S. Nielsen, *Secular Justice in an Islamic State: Maẓālim under the Baḥrī Mamlūks, 662/1264-789/1387* (Leiden: Nederlands Historisch-Archaeologisch Instituut te Istanbul, 1985); Mathieu Tillier, "The Mazalim in Historiography," in *The Oxford Handbook of Islamic Law*, 357–80. On the analysis of some cases, without taking into account the specificities of Hanafi law, see Muhammad Basheer Ahmad, *The Administration of Justice in Medieval India. A Study in Outline of the Judicial System under the Sultans and the Badshahs of Delhi based mainly upon cases decided by Medieval Courts in India between 1206-1750 A. D.* (Aligarh: The Aligarh Historical Research Institute, 1941); Muhammad Basheer Ahmad, *Judicial System of the Mughul Empire: A study in Outline of the Administration of Justice under the Mughul emperors based mainly on Cases decided by Muslim Courts in India* (Karachi: Pakistan Historical Society, 1978); Wahed Husain, *Administration of Justice during the Muslim Rule in India* (Calcutta: University of Calcutta, 1934).

[602] Tillier, "The Mazalim in Historiography," 372.

[603] Fani Kashmiri, *Akhlaq-i ʿalam ara*, 191.

hisabi or *behisabi*). This sense of injustice due to inequity, immoral action, and aggression was voiced in a variety of ways, most notably, through petitions and supplications to which state agents had to respond through rescripts. Nudging, force, legal procedure, and accounting adjustments were made to ensure fairness, equity, and accountability.

The theologian, Abu Maʿali Juwayni (d. 1085) and Ghazali define public welfare (*maslaha*) as encompassing different elements like suitability (*munasaba*), necessity (*darura*), need (*haja*), and universal precept (*qaʿida kulliya*).[604] This Islamic ethical paradigm is routinely used even today in South Asia in variants of reasonableness in one's actions vis-à-vis the intended consequences (*munasib*, *munasiba*), the necessity to complete an action in one way since no alternative solution exists (*jaruru*, *jaruri*, *jarur*, *zarurat*, *jarurattu*), a universal rule or even discipline to be followed at all times (*kayade*, *kayida*, *kayde*), and needs that reflect the lack of a want whose absence may not be harmful as such (*hajat*, *hajata*).[605] The mirroring of regional language use with Juwayni and Ghazali, and as we will see below through Mughal documentation, confirms that Islamic concepts of public welfare had defined the Indo-Islamic public space and traces of those notions still survive. The widespread use of paper from the middle of the second millennium offered the means for such petitioning.[606] Paper created the possibility for petitions with specific requests to be sent and rescripts containing legal settlements sent back over long distances. This specific form of petitioning (*ʿarz*) for honoring one's rights or satisfying needs that

[604] Felicitas Opwis, Maṣlaḥa *and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to the 8th/14th Century* (Leiden: Brill, 2010), 57–8. Also see Sohaira Z. M. Siddiqui, *Law and Politics under the Abbasids: An Intellectual Portrait of al-Juwayni* (Cambridge: Cambridge University Press, 2019).

[605] I have verified the existence of these terms in Urdu, Hindi, Bengali, Marathi, Kannada, and Telugu.

[606] On petitioning in Marwar, see Sahai, *Politics*. On colonial petition practices, see Robert Travers, "Indian Petitioning and Colonial State-Formation in Eighteenth-Century Bengal," *Modern Asian Studies* 53, no. 1 (2019): 89–122.

is still used as a request, prayer, or application (*arj*, *arju*, *arji*) would have been unknown in the pre-Islamic and the pre-paper era in South Asian societies. In return, the rescripts (*tauqiʿ*) were sent as legally binding warrant (*parvana*), laissez-passer (*dastak*), mandate (*sanad*), or notification (*iʿlam*) to enforce the decision.[607]

Modalities of hierarchy and status no doubt played a role where one took recourse to powerful persons to answer one's problems. Probing this agency tells us of the kind of legal access and aid Mughal civilians had while interacting in spaces of power. These were points of intersection between subjects with private concerns and public officials of the Mughal State. This intersection was also the site where Mughal subjects' legal recognition happened. Petitioning was an act seeking welfare in circumstances of need (*hajat*) and necessity (*zarurat*) from untoward realities beyond the state's actions such as poverty, death of a breadwinner, and natural calamities. However, need and necessity could also be a direct product of oppression (*zulm*). The Mughal State had to redress such injustices, be responsive through rescripts replying to demands, and settle legal claims for it to be a lawful state. It could take a series of iterations such as contacts with local state agents to push the pencil up to the concerned authorities, get specific recommendations to tackle unwieldy officers, or getting hold of notarized copies from judges and flagging them as judicial proof that had to be honored by all state agents as a court order has an impeachable sanctity.

In the Mughal Empire, one of the most vulnerable communities were the *banjara*s who carried out cross-country trade. They were easy targets and the greatest victims of highway robbery and murder as they controlled the movement of grain and salt to the cities. They could also be notoriously troubled by Mughal customs officers who detained them on the suspicion of illegal

[607] Some of these terms again survive in regional languages. In Kannada and Telugu, the vernacularized *elam* or *elamu* from the notification (*iʿlam*) represents an auction since auctioneering processes involve notifying one's price.

trade to circumvent paying custom duties. High military officers issued a laissez-passer (*dastak*) for safe passage. In 1706, Namun received a *dastak* informing him that some *banjara*s who were bringing goods for the prince Muʿazzam's army were detained at the weighing stations (*tolai*) for the payment of customs duty. Namun was informed that a few *banjara*s of whom four had been wounded in skirmishes with the customs officers had been detained. He was directed to get them released and produced at a judicial court for investigation behind the incidents.[608] In salt trade, especially, from the saltpans of Sambhar, the *banjara*s were actively involved in salt distribution. Baqi Khan, the Sambhar *faujdar* regularly provided escorts for them in the 1690s. When these saltpans had been leased (*ijara*) from state control (*khalisa*) only 600,000 rupees of the total 800,000 rupees had been recovered. Hearing that the prince's army was marching nearby, the *banjara* salt transporters fled Sarai Sang without paying the duty they were expected to pay him. Jai Singh II ordered that Islam Khan arrest the *banjara*s from their native lands (*vatan*), Rampura or realize money from their relatives. When Jasrup plundered property of *banjara*s in Amjhera *pargana* the enquiry was entrusted to the Rajputs.[609] The *banjara*s would be tracked and investigated whether that be for non-payment of customs or provide them security and enquire on the highway conditions.

Hiraman reported that Husain ʿAli had been killed by bandits on way his way to Delhi and requested some monetary help and protection (*parvarish*) for his descendants.[610] As one letter to

[608] "*Dastak* issued to Namun dated julus 49/1117 AH (1706)," Doc. no. 608, *Mutapharrika kagajata pharasi Jayapura*, Bundle no. 16, Rajasthan State Archives, Bikaner.

[609] "Internal chancery copy of the Persian letter from Jai Singh II to Islam Khan," Doc. no. 372, *Mutapharrika ahalakarana bila tarikha*, Bundle no. 5, Rajasthan State Archives, Bikaner.

[610] "Petition (*ʿarzdasht*) from Hiraman to Bishan Singh," Doc. no. 14, *Khatuta maharajagana*, Bundle no. 1, Rajasthan State Archives, Bikaner.

Kalyan Das noted, Hafiz Nasir was beaten and killed (*mara pita gaya*) on the way to Ajmer.[611] Thugs, plunderers, and raiders were not uncommon in precolonial South Asian highways and taming "bandit groups" was also a major problem.[612] Later, what came to be known as "thuggie" under British colonial rule and the designation of those groups in entirety as "criminal tribes" has received much attention. While colonial modes of rationality criminalized them, an acute problem of highway robbery did exist in precolonial South Asia as Mughal documents repeatedly testify. A detailed evaluation of how the Mughal State treated these communities and punished them as per Hanafi law on highway robbery and brigands remains to be undertaken.

The Mughals had two kinds of preventive and defensive mechanisms against these problems. Road patrols (*rahdari*) dotted the highways, and, as they intersected cities, garrisons, and forts, military check points (*thana*) were set up. Closer to cities and agglomerations, police check points (*kotwali*), raised platforms (*chabutra*) and canopies (*chatri*) providing observation points regulated civilian movements inside and outside. In Burhanpur's Jaisinghpura, Birbal and Shobha Chand managed the *kotwali* around 1682. Mustafa Khan was a local police recruit who received a daily allowance of 12 annas. Najabat Khan suggested his name to the Ujjain *suba*'s *mutasaddi*s. Ujjain's Qazi Abu al-Karim notarized that Mustafa Khan's salary would take effect from October 10, 1713.[613] Radha Ballabh in the Rajput chancery coordinated the customs earnings

[611] "Anonymous Rajasthani letter to Kalyan Das dated 1727 VS (1671)," Doc. no. 136, *Amera abhilekha*, Bundle no. 3, Rajasthan State Archives, Bikaner.

[612] Michael Cooperson, "Bandits," in *Violence in Islamic Thought from the Qurʾān to the Mongols*, eds. Robert Gleave and István T. Kristó-Nagy (Edinburgh: Edinburgh University Press, 2015), 191–9. See John F. Richards and Velcheru Narayana Rao, "Banditry in Mughal India: Historical and Folk Perceptions," *Indian Economic and Social History Review* 17, no. 1 (1980): 95–120.

[613] "True attested copy of *parvana* (mandate) from Najabat Khan to the *mutasaddi*s of Ujjain *suba* notarized by Qazi Abu al-Karim dated 1 shawwal julus 2/1125 AH (October 10, 1713)," Doc. no. 952, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*), Bundle no. 5, Rajasthan State Archives, Bikaner.

of Shahjahanabad's *chabutra*. He wrote to Hari Singh asking him to make an allowance of 18 rupees from those incomes to Farz Allah.[614] Radha Ballabh noted too that the Meena tribes who brought camels to Jahanabada had been imprisoned by the *Amir al-umara'*'s agents for not paying customs.[615]

These spatial checkpoints dotted in different directions of the city gates and further towards main entry points or river-crossings created a mosaic of a public power monitoring undue intrusions. Perhaps, these controls also gave enough vantage points of observatory surveillance to prevent *jati*, gender, and religious mixing deemed inappropriate in seventeenth-century perceptions of ethnic affinity and exclusionary attributes of ritual pollution. The Rajput official, Dhiraj let Purohit Narottam stay in his *haveli* in Jaisinghpura. Paying due respects to Jai Singh II, Dhiraj sent him a letter reporting that Narottam had been allowed to stay in the mansion for a duration. Narottam was given the freedom to let the mansion be occupied by anybody he liked.[616] Dhiraj had also promptly notified the local *kotwal*, Muhammad so that his agents did not trouble Narottam. Or, when the weavers in Jaisinghpura's *karkhana*s had woven shawls with Qur'anic verses on them, the matter went to Aurangabad's judge, Qazi Nazr al-Haqq. The judge investigated it and found out that the weavers had been given motifs to weave that they admitted was no fault of theirs. Illiterate as they were, they had no clue that they were weaving Qur'anic verses on the shawls. The imperial court issued an order (*hasb al-hukm*) to the Rajputs asking them to get Jaisinghpura's *karkhana* weavers to sign a bond (*muchalka*) for personal responsibility (*dhimma*

[614] "Rajasthani letter from Radha Ballabh to Hari Singh," Doc. no. 457, *Khatuta hindi ahalakarana*, Bundle no. 1, Rajasthan State Archives, Bikaner.

[615] Colloquially, the city was ctalled Jahanabada.

[616] "Persian letter from Dhiraj to Jai Singh II," Doc. no. 236, *Mutapharrika kagajata pharasi Jayapura*, Bundle no. 11, Rajasthan State Archives, Bikaner.

or *zimmedari*).[617] Signing the bond, the weavers accepted their mistake and promised to not make such errors in the future. Through these legal and official channels of regulation, surveillance was kept over who lived where, their behavior and interaction to monitor *jati*, *baradari*, and communal relations as much as hierarchies in the urban sphere. While we cannot further pursue this aspect of urbanity, we may add that diversity in Mughal society was preserved through a tight management of social networks. These modalities of checking behavior that crossed certain thresholds of *jati* and religious difference are telling of deeper divisions within precolonial urbanity. While Timurid public power gave autonomy to non-Muslims, the institutional apparatus checked what they perceived as excesses leading to the transgression of moral and social orders at the foundation of this society.

It was not uncommon a feature for Mughal soldiers, who roamed around the empire, to behave in an unruly fashion and trouble civilians. This was an experience the peasants often faced when soldiers camped on their farmlands destroying standing crop to their chagrin. Shayista Khan's revenue collector (*ʿamil*), Rawal Ganga Das complained that Jai Singh II's and Prince Bidar Bakht's soldiers had entered the lands not earmarked for revenue assignment (*pai baqi*) and had stolen cattle from the village. Bidar Bakht's soldiers also robbed a village. Ganga Das asked for the prompt recovery of the village cattle and handing them over back to the villagers.[618] When matters came directly to the Padishah on Muhammad Murad who ruined the standing crop by pitching his tents in some Deccan villages, the value of the crop loss was deducted from his income

[617] "*Naql* (copy) of *hasb al-hukm* to Bishan Singh," Doc. no. 268, *Miscellaneous Persian Papers concerning the Maharaja Sahib* (*mutapharrika Maharaja Sahaba pharasi Jayapura*), Bundle no. 1, Rajasthan State Archives, Bikaner.

[618] "Petition (*ʿarzdasht*) from Rawal Ganga Das to Jai Singh II dated julus 49/1116 AH (1704)," Doc. no. 836, *Arajadashta pharasi Jayapura*, Bundle no. 5, Rajasthan State Archives, Bikaner.

and the villagers compensated.[619] These "on account" (*ʿala al-hisab*) deductions were made on future salaries. Such a reduced salary, if taken at face value today without comprehending the adjustment made from the past year will also show a misleading deflation.

At times, Mughal officers themselves coerced lower state agents to either not send news reports or manipulate them in their favor. Qazi Muhammad Sadiq heard a case when Mir Jumla sent a *hasb al-hukm* to Fateh ʿAli Khan's *faujdar* that they had forcefully asked the intelligence reporter (*savanih nigar*) to execute a bond (*muchalka*) in 1715.[620] The intelligence reporters were liable for false or inaccurate reports. On taking his testimony and verifying Mir Jumla's mandate, Qazi Sadiq issued a notarized copy to Fateh ʿAli Khan to direct the secret agent to not pay heed to such threats. Thus, the judges would bring legal pressure on the employer, Fateh ʿAli Khan to force his employees to exercise restraint. Even the high-ranked *amir*s were not insulated from misdemeanor against local communities. The judges called the public (*ʿamm*) to file a formal complaint. No doubt, it was not easy for the public to speak up, though as a collective they were safe in recording testimony. In 1701, in *qasba* Sehore (outside today's Bhopal), the public made an attestation (*mahzar*) in Qazi Abu al-Barakat's presence that Jai Singh II had halted at Alamgirpur on his way to the imperial court. These areas were Iradat Khan's *jagir* and Jai Singh II had forcibly imprisoned Kripa Ram, Alamgirpur's revenue collector (*ʿamil*). Later, he had released Kripa Ram on the payment of 376 rupees.[621] The public of Sonkhar *pargana* too testified

[619] "*Vaqiʿa* dated 18 ramadan julus 25/1092 AH (September 21, 1681)," Doc. no. 277, *Akhbarat-i darbar-i muʿalla*, Bundle no. 9. Rajasthan State Archives, Bikaner.

[620] "*Naql* (copy) of Mir Jumla's *hasb al-hukm* to Fateh ʿAli Khan's *faujdar*s notarized in the presence of Qazi Muhammad Sadiq," Doc. no. 404, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*)," Bundle no. 3, Rajasthan State Archives, Bikaner.

[621] "*Naql* (copy) of *mahzar* extracted from the public of *qasba* Sehore in the presence of Qazi Abu al-Barakat dated julus 45/1113 AH (1701)," Doc. no. 1206, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*), Bundle no. 7, Rajasthan State Archives, Bikaner.

that Jai Singh II came to know that Tej Ram had captured the food grain of Ibrahimabad *mauzaʿ*, which were under Rajput *jagir*. Ayamal had been sent to suppress Tej Ram who was building a fort in the vicinity. A skirmish ensued as Tej Ram would not abstain from building his fort. Defeated, he took flight. The judge notified local villagers desiring that all those acquainted with the facts of the case freely testify.[622] Such depositions would then be sent to the imperial court to have detailed records from diverse sources, not just state agents but crucially the subjects, of what had transpired.

On misdemeanor by state agents, the ordinary judge (*qazi*) could do little as disciplining needed prodding from no less than the military governor (*nazim*) or the military magistrate (*faujdar*). The best route available to find solutions was, where possible, getting higher officers to recommend (*sifarish*) the redressal and once the work was done send a note of gratitude for the favor. Bairat's tax collector had been troubling the local chieftain of the Med village (approximately 12 kms from Bairat), Bhav Singh Shekhawat. Meeting the Rajput representative, Sri Chand, Shekhawat and his allies asked the Kacchawaha *amir*, Jai Singh II to permit Sri Chand to write to Nusrat Yar Khan. Nusrat Yar Khan was *naʾib subadar* of Ajmer and *faujdar* of Narnaul who could bring the tax collector to his senses.[623] Though undated, this letter, probably written in the early 1700s, reveals the convoluted channels one had to adopt to not disturb official Mughal hierarchies or ground realities:

Sri Chanda nai paravanagi pahaucai ju khata [*khatt*] *yekabai Nusarata Yara Shama lishidanau isa majamuna* [*mazmun*] *aparanci Bhava Syangha Sekhavata jahara* [*zahir*] *kari*

[622] "*Naql* (copy) of *mahzar* extracted from the public of Sonkhar *pargana*, undated," Doc. no. 183, *Mutapharrika ahalakarana bila tarikha*, Bundle no. 6a, Rajasthan State Archives, Bikaner.

[623] Nusrat Yar Khan went on to fight alongside Muhammad Shah against the Saiyid brothers in the Battle of Hasanpur, southwest of Delhi in 1720.

ju mau. [*mauzaʿ*] *maida. vagai.* [*va gairuhu*] *praga.* [*pargana*] *Bairatha ka hamari jamidari* [*zamindari*] *main hai su amila* [*ʿamil*] *Bairatha ka gaira hisabikhe* [*ghair hisab*] *calakare hai isa vaste lishai hai ju amila majakura* [*mazkur*] *saun aisi takida* [*taʾkid*] *karauge ju be hisabi ke cala karane na pavai aravajivi hasaba maphika* [*muʿafiq*] *paise liya karai*.[624]

Please issue a warrant to Sri Chand so that he can write a letter to Nusrat Yar Khan at once. Attached below are the details from the undersigned, Bhav Singh Shekhawat, who declares: we possess a *zamindari* in Med and [surrounding] villages in Bairat *pargana*. We are writing about the misbehavior on the part of Bairat's tax collector. We are writing so that the aforementioned tax collector's compulsive disgraceful attitude be restrained. Let him only collect [legally sanctioned] levies in proportion [with agreed terms and conditions].

Upon receiving this petition, the Rajput chancery performed its regular bureaucratic paperwork by noting on the blank space below the complaint: "whatever was ordered has been drafted and sealed" (*jo hukama hoyatau lishi kari muhara kara he*). Most likely, Shekhawat spoke to Sri Chand who suggested he was willing to intervene if Jai Singh II permitted him to request Nusrat Yar Khan. A local *zamindar* could do little against Bairat's tax collector.

The complaining tone of this petition highlights the indignation felt due to misdemeanor on the part of state agents. It reflects an acute awareness that, in the last resort, favor from higher up officers was needed (*hajat*). In some instances, need had even become necessity (*zarurat*). Shekhawat and his villagers would have exhausted all local options of appeasement before lodging a formal complaint against the tax collector's compulsive misdemeanor (*aisi takida karauge*). This

[624] "Undated Rajasthani *arajadashta* sent on behalf of Bhav Singh Shekhawat to Jai Singh II," Doc. no. 44, *Hindi Letters, Maharaja Sahib, undated (khatuta Maharaja Sahaba hindi bila tarikha)*, Bundle no. 1, Rajasthan State Archives, Bikaner. In regional languages, unlike in Persian, the place identification markers were abbreviated: *mau* represents *mauzaʿ* or *mauja* (village) and *praga* denotes *pargana* or *pragana* (district).

ruffian style of demotic speech is far removed from the rhetoric of cosmopolitan Persian cultivated in high society where ornate belles-lettristic style politeness demanded citing the poets, Hafiz or Saʿdi. Yet, demotic supplications in vernacular languages in the Mughal Empire are replete with disformed renderings of Persian words. The quotidian use of Persian revenue and administrative terms and Hanafi legal concepts was sustained by a continuous interaction with public authorities and acculturation to bureaucratic procedures in approaching official channels. They approached the Mughal State's official channels by employing the state's own language and its laws. More significantly, even its Islamic ethos of petitioning against hostile behavior had been deeply internalized. The supplication represents the weaker person's helplessness and voices his or her incapacity in the face of inappropriate behavior by state functionaries. The redressal had to pass through other agents who made subjects' voices heard on their behalf. These different layers reveal textures of ordinary Mughal subjects' legal consciousness.

While, for now, we have not solved the puzzle of what happened to this petition, two aspects are evident: state agents' interaction and local conditions. Ajmer's *vaqiʿa navis* would have certainly informed the imperial court of the tax collector's attitude because Bairat on the way between Delhi to Ajmer had the imperial mint and copper mines, both of high security concern for the Mughal State. More troubles would have meant sending additional cavalry and troops in case peasants were upset and disrupted minting and money supply creating palpable worries for the *mahajan*s. Nusrat Yar Khan was in regular touch with Jai Singh II. These petitions were also warning signals to the imperial court, which had to pre-empt dissatisfaction turning worse. Avoiding false signals too was essential as they could prove costly and disruptive to other activities like revenue collection, commercial packaging, sowing and harvesting. From the local context in Bairat, what kinds of circumstances dictated these negotiations between Sri Chand and

Shekhawat? Who dictated the contents of this letter to the scrivener? Where was this cheap quality paper procured?

The Padishah's own sense of justice was unlike everybody else. His life's ideal was Timurid public power on temporal affairs concerning all subjects and the imamate of the Muslim community on their religious affairs. A strict policy was to pay a monetary equivalent for any services subjects offered him and his entourage. While he had general jurisdiction, often, while travelling or camping, his entourage invariably benefitted from local services and impinged on their local rights (*huquq*) such as access to water sources. The principle was straightforward: preventing the state's free ridership. On October 18, 1681 when the imperial train found poor diseased folks on the highway from Rajasthan to the Deccan, the Padishah ordered that food and drink arrangements be made.[625] While halting in Mukundgarh a month earlier, as was customary, the local elite paid a visit to the itinerant imperial court. Kishori Singh, the *gumashta* of Mukundgarh's *zamindar* met the Padishah and offered 100 rupees from his side and 400 rupees and 150 goats from his master's and village's side.[626] In this society, nobody went before authority empty handed and took some sort of gifts depending on their capacity. Padishahs too customarily offered robes (*khilʿat*), betel boxes (*pandan*), money, and other gifts. However, Kishori Singh's gifts (*nazrana*) were returned to the *gumashta*. It was Aurangzeb ʿAlamgir's dignity to bestow something to them from the *bayt al-mal* and never to stoop low by accepting gifts from the ordinary folk (*ʿamm*). To hold public power was to behave in a manner that made a deep impression on his subjects' minds.

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[625] "*Vaqiʿa* dated 15 shawwal julus 25/1092 AH (October 18, 1681)," Doc. no. 282, *Akhbarat-i darbar-i muʿalla*, Bundle no. 9, Rajasthan State Archives, Bikaner.

[626] "*Vaqiʿa* dated 2 ramadan julus 25/1092 AH (September 5, 1681)," Doc. no. 298, *Akhbarat-i darbar-i muʿalla*, Bundle no. 9, Rajasthan State Archives, Bikaner.

Yet, other strange scenarios could unfold wherein the Padishah was called upon to decide the life and death of his subjects. European travelers observed that the practice of ritual "widow self-immolation/burning" (so-called *sati*) was common in the Mughal dominions. In 1703, Jai Singh II received a "statement of circumstances" (*fard-i haqiqat*) on skirmishes in Gaondi near Sawai Madhopur. Khushhal Singh Rathor, the Gaondi *zamindar* had taken a loan of 95,000 rupees from Bhuji and was unwilling to repay. Bhuji approached Lala Chauhan, the nearby *zamindar* of Cheta to help him. In the ensuing conflicts between these two groups, Khushhal Singh fled. When Lala Chauhan returned to take his horse, he was attacked and murdered by the *faujdar* of Muhammadpur. Consequently, Lala Chauhan's wives immolated themselves and became *sati* with his corpse.[627] While the Timurids had given autonomy to their non-Muslim subjects even on beliefs they abhorred, would the Padishah permit it if he had to voluntarily give license to "suicide"? If he had to grant permission for becoming a *sati*, he could not from his ethical perspective as a Muslim ruler who had no legal authority to endorse "suicide" as Hanafi law prohibited such acts. In the Deccan conflicts in 1706, Bhavji requested Mughal officials to hand over the corpse of a dead man killed in the battle. His wife pleaded with the Padishah and begged him to release the corpse so that she could become a *sati*. The Padishah refused any such permission and ordered the cremation at state expenses.[628] Such incidents do not make Aurangzeb ʿAlamgir an early "reformer" on the issue of *sati* in India. These discrete decisions were taken in the context of public welfare since his imamate precluded the right to grant the right to take one's own life. This refusal was part of a universal precept (*qaʿida kulliya*) that suicide was illegal and unethical. Under all

[627] "*Fard-i haqiqat* (statement of circumstances)," Doc. no. 103, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*), Bundle no. 8, Rajasthan State Archives, Bikaner.

[628] "*Vaqiʿa* dated 14 safar julus 49/1118 AH (May 17, 1706)," Doc. no. 579, *Akhbarat-i darbar-i muʿalla*, Bundle no. 9. Rajasthan State Archives, Bikaner.

circumstances of life, death, and conflict, it was obligatory (*fard*) on him to deny authorization to commit suicide whatever the underlying belief structure of the individual making such demands.

The Timurids also faced more pressing problems of collective welfare if individual need (*hajat*) such as hunger turned into a collective necessity (*zarurat*) when famines struck. In Ghazalian ethics, if every individual in a group has a need, collectively, it becomes a necessity. Necessity is a higher component of public interest than need and acting on it was obligatory (*fard*) on the Mughal State as the landlord of its tenant peasantry. As late as the mid-nineteenth century, British famine officers encountered memories among the Yamuna doab peasants of Aurangzeb ʿAlamgir's famine relief conducted in 1661.[629] So, what was the Timurid rationale behind famine relief? Two elements are of vital interest for an historical analysis: the way famine relief was conducted and the Hanafi ethic on the nature of intertemporal adjustments to fiscality.

Alexander Dow and James Mill gave credit to Aurangzeb ʿAlamgir for organizing one of the best-known famine relief efforts.[630] Dow added, "to alleviate the calamity which had fallen on the people, was the principal, if not the sole business of the emperor during the third year of his reign."[631] He imposed an embargo on rice exports from Bengal known through Balance of Trade data and procured food grain from Punjab and Bengal. In 1661–2, this led to a spike in rice prices from 48 to 71 rupees for 100 *man*s in Bengal.[632] Though a substantial increase in Bengal, this remained manageable as the price burden of famine relief was regionally distributed. The Mughal

[629] C. E. R. Girdlestone, *Report on Past Famines in the North-Western Provinces* (Allahabad: Government Press, North-Western Provinces, 1868), 6.

[630] Dow, *The History of Indostan*, vol. 3, 340–2. Also see Mill, *The History of British India*, vol. 2, 349–50.

[631] Dow, *The History of Indostan*, vol. 3, 342.

[632] Om Prakash, *The Dutch East India Company and the Economy of Bengal, 1630-1720* (Princeton: Princeton University Press, 1985), 252.

military command structure came in handy: military officers were asked to remit rents in their own *jagir*s, and everyone fell in line.

In 1661, the Mughal State procured the food grain and distributed it to the peasants free of cost or at lower rates depending on their capacity. Moreover, peasants always travelled to nearby cities since urban dwellers had the capacity to pay for charity. Wholesale food grain *ganj*s were all concentrated in towns and cities. In 1661, famine relief camps were set up in several *pargana*s of the Yamuna doab to prevent peasants flooding into Delhi that could lead to a cholera outbreak. This trend of peasants reaching cities common in Mughal India would continue well until the Great Bengal Famine of 1943. Not until after independence were intermediary grain *mandi*s created in rural areas as a precautionary measure against famine. Despite the advent of telegraph and railways in the nineteenth century, colonial famine policy did not envisage any capacity building for rural storage centers. Further, unless salt procurement and distribution compensated for real shortages, a fall in salt consumption led to additional famine deaths. The Mughal control over inter-regional salt trade managed by the *banjara*s gave them the opportunity to reroute salt distribution networks whenever famine conditions began to appear. The price data that the Mughal State collected, as we argued earlier, helped keep information on price and food availability up to date. As Jean Drèze argues, "in the presence of important uncertainties and information costs, judicious government involvement in food trade can have many positive effects, including that of stabilizing food prices."[633] Within its limited transportation capacities, the Mughal State precisely undertook this task as regulating the political economy was its central concern.

[633] Jean Drèze, "Famine Prevention in India," in *Political Economy of Hunger*, vol. 2: Famine Preventions, eds. Jean Drèze and Amartya Sen (New York: Oxford University Press, 2007), 28.

During his teaching career at Delhi's *madrasa*, Mulla Jiwan Amethawi (d. 1717–8) regularly met the Padishah elucidating to him on the intricacies of Islamic sciences. Amethawi's commentary *Nur al-anwar* on ʿAbd Allah Nasafi's (d. 1310) *Kitab al-manar* on the principles of jurisprudence became part of the eighteenth-century *madrasa* curriculum, *dars-i nizamiyya*. In *Nur al-anwar*, Amethawi reasoned that the peasants were not liable for paying the revenue in circumstances of acute distress resulting from causes beyond their capacity: "if [the farmer] does not neglect [the land] and does agriculture, but some trial befalls the land, the land tax falls by the wayside, because it is obligatory due to a facilitating capacity."[634]

Based on this principle, Aurangzeb ʿAlamgir had remitted the rents for two years during the famine. For him, the remitted rent was a bygone that could not be recovered in the next fiscal cycle as the revenue "had fallen in the wayside" due to the peasantry's inability to pay given natural calamities. Mughal fiscal time was at disjoint—no mutualization of time cycles was possible.[635] Moreover, the Mughal State would bear the revenue decrease and let the revenue demand slide. Over the next few years, as cultivation rose, the state would gradually increase its revenue in tune with increasing food production. In his Hanafi ethic, the *bayt al-mal* also absorbed the costs of famine relief over and above the loss to the current accounts of the state exchequer's revenues. The state endowment's thesaurized wealth took a dent to save the lives of the peasantry. Given that the liability to pay rent was a discrete event in each time instant, he would not set targets with an objective timeline of long-run revenue growth rates. As the landlord, the Mughal State had, in his view of public power, an obligation (*fard*) vis-à-vis its tenants and their livelihood.

[634] Translation cited in Asad Q. Ahmed, "Reflections on the Postclassical Ḥanafī Legal Object: Case Studies of the *Manar* Tradition," forthcoming. I thank the author for sharing the article.

[635] On famine relief in the Deccan and the *jizya* remission in 1704, see Habib, *The Agrarian*, 286–7.

While we have not provided a full-fledged explanation, these juridico-philosophical aspects of Hanafi fiscality are key to understanding why famines were not as devastating in the precolonial period as they would become under even early colonialism. During the Great Bengal Famine of 1770, the EIC's revenue demand was kept steady.[636] Moreover, the disruptions in communication lines and inter-regional trade in a politically fragmented subcontinent meant that Bengal was unable to import salt as much as grain from distant regions. Nor was bordering Awadh willing to sell food grain worrying about its own subjects. Charity and rent remission remained minimal while the next year's revenue demand was even increased since the EIC's Board of Directors had to compensate for military expenditure elsewhere. Owing to a bumper harvest in 1771, food grain prices crashed in eastern India leading to a higher real incidence of revenue burden. These elementary aspects of fiscality and reaction to famine conditions distinguish Timurid public power's "state" from the private trading "company-state."

Legal Consciousness and the Guarantee of Rights: Adjudication at Judicial Courts

In Mughal cities, the judicial court (*dar al-qada*ʾ) was held with the full presence of agents (*vakil*) representing the local military administrator (*nazim*), the military magistrate (*faujdar*), the police (*kotwal*), and security guards (*gurzbardar*). We take two court cases to illustrate the judicial procedure as well as the imperial supervision of judges.

Bimal Das, Mirza Ram Singh's clerk (*mutasaddi*) in charge of handling Rajput Delhi affairs lived in the suburb, Jaisinghpura from at least 1671 until 1681. The only information I have

[636] Narendra Krishna Sinha, *The Economic History of Bengal: From Plassey to the Permanent Settlement*, vol. 2 (Calcutta: Firma K. L. Mukopadhyay, 1962), 48–67. Also see W. W. Hunter, *The Annals of Rural Bengal*, vol. 1 (London: Smith, Elder & Co., 1868).

found so far on his activities pertains to a letter Shahjahanabad's local trader, Bohra Manohar sent to Bimal Das in 1671 asking him to fix an auspicious astrological time (*muhurta*) for his son's marriage.[637] Ten years later by 1681, Bimal Das's relations with Shahjahanabad's merchant community seem to have turned sour. He was deeply in debt and defaulted. In South Asia, creditors normally protest in front of the debtor's house asking for their reimbursement. In October 1681, the local *bania* caste council (*panch*) assembled (*jamaʿ shud*) and would not let go of the matter. They were extremely furious and demanded the requisition (*taqaza*) of Bimal Das's house. And, in turn, they demanded its seizure (*qurq*) to repay their debts.

Bimal Das's creditors demanded that their outstanding debts be paid by liquidating his assets in Jaisinghpura, most notably, his house. As was common, the caste councils (*panch*) were a ubiquitous feature of South Asian landscape. No doubt, they settled internal caste-related issues. However, on civil matters, customary community heads took recourse to the judicial courts in the cities who were the competent legal authorities. The *panch* could not take the law and order into its own hands in Shahjahanabad and the local police would have seen to it that any untoward incidents did not happen.

Once the matter had come to the local police's notice, the matter found itself in a court litigation at the door of *Aqza al-quzat* Shaikh al-Islam (d. 1698), the Chief Judge. Shaikh al-Islam was the former Chief judge, ʿAbd al-Wahhab's son. Shah Nawaz Khan, the eighteenth-century chronicler had nothing but praise for Shaikh al-Islam's uprightness in making settlements between the plaintiff (*muddaʿi*) and the defendant (*muddaʿa ʿalayhi*). He went on to say that there had been

[637] "Rajasthani letter from Bohra Manohar to Bimal Das dated 1727 VS (1671)," Doc. no. 136, *Amera abhilekha*, Bundle no. 2, Rajasthan State Archives, Bikaner.

no judge like him in honesty and piety during two centuries of Timurid *saltanat*.[638] In this case of Bimal Das's court settlement, which is perhaps the only available court order issued by Shaikh al-Islam that exists, we find the transfer of the case to another jurisdiction.

On October 20, Shaikh al-Islam held a hearing and issued a court order (*hukm*) approving the creditors' right to recovery. However, the final settlement was not under his legal competence. Instead, he transferred the case to Qazi Muhammad Mah in Amer asking him to get the payment made in his jurisdiction.[639] This procedure of transferring the legal case from one jurisdiction to another is a crucial part of judicial procedures, called *kitab al-qadi ila al-qadi* (letter from the judge to another) in the *FA*.[640] When a litigation could not be fully resolved in its original jurisdiction, the judge issues an interim order and transfers that decision to another for the final settlement.

Shaikh al-Islam concluded an agreement between the two parties. Rather than give in to the *panch*'s agitated demands for immediate seizure of properties, the Chief Judge pursued a different avenue. Selling off Bimal Das's house posed an ethical dilemma. This would visit injustice on his household and servants. For no mistake of theirs, they would be rendered homeless due to Bimal Das's actions. Legally giving dues to the plaintiffs, Shaikh al-Islam's court order acknowledged the fact that they had to be repaid. He decided that the payment be made from Bimal Das's income, which was determined as a share within Rajput *jagir* revenues. Here, the Kacchawaha household is treated as Bimal Das's as he worked for them. The *FA* says that the

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[638] Shah Nawaz Khan, *Maʾasir al-umaraʾ*, vol. 1, 238–9 (Eng. trans., vol. 1, 76–7).

[639] "*Naql* (copy) of the *parvana* from *Aqza al-quzat* Shaikh al-Islam to Qazi Muhammad Mah dated 17 shawwal julus 25 (October 20, 1682)," Doc. no. 480, *Mutapharrika kagajata pharasi Jayapura*, Bundle no. 14, Rajasthan State Archives, Bikaner.

[640] Nizam et al., *FA*, vol. 3, 359–73. On this judicial procedure, see Wael B. Hallaq, "Qāḍīs Communicating: Legal Change and the Law of Documentary Evidence," *Al-Qantara: Revista des Estudios Árabes* 20, no. 2 (1999): 437–66. Also see David S. Powers, "On Judicial Review in Islamic Law," *Law and Society Review* 26, no. 2 (1992): 315–42.

judge should "write to the judge of the city in which the household lies" (*ila qadi al-balad alladhi fihi al-ʿaqar*).[641] Since Shaikh al-Islam had no legal competence to carry out the actual settlement in Shahjahanabad jurisdiction, he sent his order to Qazi Muhammad Mah in Amer to do the rest. As a court order (*hukm*), it was binding on all parties including Qazi Mah who would now be liable to implement it through his jurisdiction.

This way of paying off debts from the earned income rather than immovable assets was the principle in Mughal cities. In Mughal legal culture, creditors seizing the individual's property was perceived as deeply unethical at its core. Why would an individual's actions have an effect on his dependents for no fault of theirs? Qazi Mah took up the matter and sent a copy of the order to the Rajputs who made the payment to Shahjahanabad's merchants via a bill of exchange (*hundi*). The same amount would be deducted from Bimal Das's income over several installments. After all, the point was to pay off the creditors in ʿAlamgiri rupees.

Qazi Mah would have received the original order that became part of his *divan*. The Chief Judge kept a copy in his own *divan*. The Rajputs received a copy of the original order prepared by Qazi Mah's scribe. The plaintiffs and the defendant too would have had one each making for at least five copies. The document from which we have analyzed the case is not the original but the second-order transformation it underwent reaching the Kacchawaha chancery as part of legal redress.

Hanafi law saved Bimal Das's house and honor as much as it helped the creditors recover their dues and maintain whatever order the Mughals cherished in Shahjahanabad and its suburbs. It's certainly unlikely that Bimal Das or the creditors knew the Hanafi rules for the transfer of a

[641] Nizam et al., *FA*, vol. 3, 368.

case by a judge from one jurisdiction to another. What they would have known is that their claims would be reimbursed through these processes by which judges would get their right dues to them even if it took weeks of bureaucratic procedures. Ordinary socialization to the law happened to civilians through habit and experience of interacting with the judicial courts.

On August 20, 1693, Shaikh Nur Muhammad petitioned that Agra's *subadar* had requested Qazi Muhammad Wali to make enquires regarding the Kacchawaha Rajputs' illegal encroachment on lands belonging to Lalchand and other coarse cloth weavers (*navar-bafan*).[642] The weavers lived in Rasulpur (*sakinan-i Rasulpur*), which is today outside Agra Cantonment Railway Station. Jaisinghpura, the suburban agglomeration outside Agra (Jaipur House Colony stands in its vicinity today) was right next to the weavers' lands.[643] The Rajputs built a separating wall, though, and in the midst of the construction had encroached upon the weavers' lands. Qazi Wali was deciding the case at the *Amir al-umara*ʾ's courtyard mansion. Bishan Singh's *vakil* Meghraj was representing his master, the claimant (*muddaʿi*) and Lalchand was present on behalf of the plaintiffs (*rafiʿan*). After taking into consideration the prima facie legal evidence (*bi-surat-i hasb al-sharaʿ*) and examining the respective parties, Qazi Wali appointed Nur Muhammad to undertake a full survey of the land measurements and submit a report. In the meantime, until the case was settled, the judge issued an injunction order (*taʾkid*) to stop the construction of the wall. On Qazi Wali's orders, Agra's *subadar* resurveyed the lands of both parties. Once the investigations were completed, at

[642] "*Vaqiʿa* dated 28 dhu al-hijja julus 37/1104 AH (August 20, 1693)," Doc. no. 71, *Akhbarat-i darbar-i muʿalla*, Bundle no. 21, Rajasthan State Archives, Bikaner.

[643] While we have not been able to study the large quantities of documents for now, we may only add that the land details, measurements, and locations given in Mughal legal deeds and contracts are not only precise, many neighborhoods, canals, and road directions they mention can still be located on Google Maps. This possibility shows the extent to which seventeenth-century urban and semi-urban realities have survived in northern India. Today, many of them retaining Mughal names have been absorbed by the modern urban sprawl.

the next hearing scheduled on December 30, 1693, the Rajputs were notified through their *vakil* to demolish the wall and promptly hand over the encroached land back to the weavers. The court informed Bishan Singh that his *vakil*s could not prove their claims and that an eviction notice had been served.[644] However, nearly a month later, the Rajputs had still not vacated. On January 27, 1694, the Rasulpur weavers went once again for the next hearing seeking legal redress (*istighasat*).[645]

Matters did not end here. Just two days after losing the case, on January 3, Meghraj suggested to Bishan Singh that he directly appeal to the imperial court and write personally to the Padishah and appoint a *vakil-i sharʿi* to argue his case according to Hanafi law.[646] Non-Muslim elites employed a qualified Muslim learned scholar to argue their cases by providing legal references and finding loopholes. Bishan Singh seems to have not taken that route as challenging Qazi Wali's decision would mean many things. If there was no *locus standi*, it was better not to ask Aurangzeb ʿAlamgir himself to intervene and make oneself look too greedy. Also, the investigation of the Toda ransacking was ongoing at the same time, which seems to have taken precedence in Rajput calculations. If need be, in Timurid justice, the weavers' claims would be restored against a high-ranking *amir*'s unjust enrichment and encroachment (*ghabn*). Timurid justice, if it had to work, had to descend to the ground where ordinary subjects lived and provide

[644] "*Vaqiʿa* dated 12 jumada al-awwal julus 37/1105 AH (December 30, 1693)," Doc. no. 74, *Akhbarat-i darbar-i muʿalla*, Bundle no. 21, Rajasthan State Archives, Bikaner.

[645] "*Vaqiʿa* dated 10 jumada al-thani julus 37/1105 AH (January 27, 1694)," Doc. no. 1937, *Akhbarat-i darbar-i muʿalla*, Bundle no. 22, Rajasthan State Archives, Bikaner.

[646] "Persian *vakil* report from Meghraj to Bishan Singh dated 16 jumada al-awwal 1105 AH (January 3, 1694)," Doc. no. 644, *Persian Vakil Reports*, Bundle no. 1, Rajasthan State Archives, Bikaner.

legal aid and redressal. In the eyes of Hanafi law, the Rajputs and the weavers were both equal as parties to a lawsuit irrespective of their caste, religion, and distance from the imperial court.

At least four evidentiary documents would have existed. One would have been given to the plaintiffs, the Rasulpur weavers and another to the defendants, Bishan Singh's *vakil* (who would later file the document with Amer as part of his dispatches). A copy of the proceedings would have remained with Qazi Wali as his court records (*divan*). A brief summary of the case's appeal and decision were sent to the imperial court for oversight over its proceedings. Every piece of evidence we have cited here was sent to the imperial court in southern India. Only parts of these minutes concerning the affairs of Jaisinghpura were given to Rajput *vakil*s so that they could deposit litigations of agglomerations in Rajput management to the Amer chancery. What transpired in this case was known at least in Agra, Amer, and Aurangabad within a matter of a few weeks. The brief description of every stage at which the court case had been heard was available to the imperial court, which knew what kind of litigations their own military officers were involved in. In the Mughal State, the judges' archives were certainly not deposited in a public repository as happened among the Ottomans. Rather, in Mughal norms, the details of the judicial proceedings were appended to the *siyaha* (inventory) of the respective cities. Our information for Agra originates from the *siyaha-yi vaqiʿa-yi huzur nazim-i suba-yi Akbarabad* since it was at the *nazim*'s courtyard mansion that Qazi Muhammad Wali's court convened.[647] The judicial proceedings of the judges (*ʿadalat*) and the military magistrate proceedings were held either in forts or mansions. The minutes of every judicial court of the major cities would have reached the imperial court. For

[647] Wael B. Hallaq, "The "*qāḍī*'s *Dīwān* (*sijill*)" before the Ottomans," *Bulletin of the School of Oriental and African Studies* 61, no. 3 (1998): 415–36.

judicial courts of small towns, they were sent to the *suba* headquarters as we know from the Deccan archives.

The imperial court was concerned that judicial courts were held regularly except on Fridays. Even on this weekly holiday, the local scribe had to send official minutes that no court proceedings took place and instead the Friday prayer had been held in congregation. Everything had to be noted, and even the fact of non-activity generated a paper trail. Ramgir's public offices in the Deccan being closed for Friday prayers were sent in its daily journal to Aurangabad.[648] Judges were expected to handle the legal affairs of the local populations as much as behave according to disciplinary protocol fit for their office. A day after Qazi Wali had decided the Rasulpur weavers' case, a tense scenario loomed in the court. While the judge was hearing witnesses, Sahal Singh's *vakil* was impatient that his transactions were being delayed. He complained to Qazi Wali who vented his irritation in a fit of anger. As the minute keeper noted, Sahal Singh's *vakil* was frustrated and took this as an insult. "The custodian of the *shariʿa*, i.e., the judge (*shariʿat panah*) said: "You are his *vakil* and do not understand the pain of testifying"." The judge ordered that the *vakil* leave the court hearings at once and not come back for the day.

For the imperial chancery officer in-charge of reading Agra's court minutes, any problematic conduct by judges would had raised eyebrows. High discipline was expected of judges: "the characteristic of anger is immediately understood as an obstacle to render clear judgment."[649] If judges were misbehaving, somebody had to take disciplinary action. Indeed, Qazi Wali later received a stern warning from the Padishah when it was reported at the privy council

[648] "*Ruznamcha* of Ramgir sealed by ʿAbd al-Fath dated 13 ramadan julus 4/1071 AH (May 2, 1661)," Doc. no. IV/68, Telangana State Archives, Hyderabad.

[649] Opwis, Maṣlaḥa, 110.

that the judge had not followed the procedure of informing Agra's *kotwal* regarding the release of prisoners.[650] The judges kept a list of prisoners with their release dates as part of the *divan*. Upon completion of their terms, they were expected to notify the police before releasing them. Aurangzeb ʿAlamgir's admonition was entered in the privy council minutes that were shared with Amer, which would have also received confirmation that disciplinary action had been taken on Qazi Wali. Amer would have reported that matter to Meghraj in Agra who would have likely reconfirmed the same from Agra's *kotwal*. We can only imagine the amount of gossip all this generated in the Mughal bureaucracy. This network of information circulation went on in endless loops. On August 20, 1693, the privy council was informed that intelligence reports pointed to Mathura's Qazi Hamid unjustly realizing 4.5 *tanka*s as a daily allowance from the public and cavalrymen in the city. The Akbarabad governor sent stewards (*sazaval*) from Agra to make the 50 km journey to enquire for themselves. They stated the complaint was baseless and the judge was innocent.[651] This same information was transmitted to Amer where the chancery official would have shared it with his colleague in-charge of handling correspondence from Mathura's *faujdari* affairs. The Rajput superintendent in Mathura, Panna Miyan would have confirmed that these accusations against Qazi Hamid were baseless. In the information network and documentary design of this empire there were many ways to receive, process, share, and confirm information from multiple sources whose central aim was surveillance—keeping tabs on subordinates' actions (*harakat*). Qazi Hamid charging a paltry fee was hardly a minor matter; it would be an illegal

[650] *Vaqiʿa* dated 11 shawwal julus 39/1106 AH (May 15, 1695)," Doc. no. 18, *Akhbarat-i darbar-i muʿalla*, Bundle no. 23, Rajasthan State Archives, Bikaner. For a general overview on the relation between the rulers and the judges, see Miriam Hoexter, "Qāḍī, *Muftī* and Ruler: Their Roles in the Development of Islamic Law," in *Law, Custom, and Statute in the Muslim World: Studies in Honor of Aharon Layish*, ed. Ron Shaham (Leiden: Brill, 2007), 67–86.

[651] *Vaqiʿa* dated 28 dhu al-hijja julus 37/1104 AH (August 20, 1693)," Doc. no. 411, *Akhbarat-i darbar-i muʿalla*, Bundle no. 22, Rajasthan State Archives, Bikaner.

exaction. For the *imam*, it was a high state affair that his deputy in judicial functions was overstepping his bounds, harassing the public leading to their frustration, and creating tensions in dealing with other public functionaries.

Mughal judicial courts were not held in mosques as was the conventional norm in West Asia. Rather, they took place in public spaces like forts and mansions of the administrative elite, which were easily accessible for their non-Muslim subjects who might have had ritual inhibitions of entering other religious places of worship. Jurists suggest that the mosque is the ideal place for rendering justice. The Timurids had even forgone this best legal option. They opted for a less favorable public place to accommodate the interests of their non-Muslim subjects.[652] Since justice (*ʿadl*) had to be rendered, they chose a less preferred legal option through juristic preference (*istihsan*). This modality of legal reasoning relaxed the strict interpretation of the law in the larger goal of public interest (*maslaha*). To serve public interest, it was deemed proper (*istislah*) to act differently rather than rigidly stick to holding them in the premises of the mosque. Choosing the best preference might have inhibited a "Hindu" unwilling to seek justice at Mughal judicial courts due to reasons of ritual pollution. This openness of the Mughal State to make accommodations was a product of the legal discourse framed by Hanafi jurists. Timurid public power remained legal. In the *imam*'s self-perception, these actions taken in public interest enhanced the notion of his justice. It went beyond bookish rule-following to a metanorm of justice as collective welfare without compromising on any ideals. In turn, as a lawful state, the responsibility to put into execution the promise to protect his subjects, including non-Muslims, fell on the ruler's shoulders.

[652] On legal opinions concerning the spot for the *qazi*'s assembly (*majlis*), see Nizam et al., *FA*, vol. 3, 306–13.

Generating Probative Value for Legal Documents:

The Survival of the True Attested Copy

Qazi Muhammad Daʾim, who we encountered earlier had been reinstated and acquitted of any wrongdoing in the ransacking of Toda. He had gone back to his routine as a judge. Perhaps, he had had enough of the bad taste that inter-*umaraʾ* rivalries would have left him with. A year later, in a letter dated January 10, 1695, Qazi Daiʾm sent the notarized copies of benefices approved by the imperial court to Hari Singh. The *qazi* no doubt would have dictated the letter to his scribe in Persian. What survives in the archives today is the Rajasthani rendering that Hari Singh's chancery officials made. Translation was the norm in all Rajput households as their Persian skills were limited at best. All orders and documents received in Persian in the Islamic style were rendered into Rajasthani of the Indic style. Draft replies were composed in Rajasthani, corrected, annotated, and rectified and then a fine Persian reply or petition was sent back. Qazi Daʾim's letter to Hari Singh concerned the imperial mandate (*sanad*) he had received from Aurangabad's Qazi Nazr al-Haqq. All the details had been verified to see if they had been in order—in compliance with the imperial regulations and the local ground realities before being duly notarized.

> *siddhi sri saravarupamam virajamana maharaji Hari Sighaji jaugi lishitam lasakarathai Kaji Muhamada Daima* [Qazi Muhammad Daʾim]… *parama santosha hoyi ji aparanca hakikata* [*haqiqat*] *ihanki agai…sau maluma* [*maʿlum*] *hui igiji tisa pichai hama Kaji Najarula Hakaji* [Qazi Nazr al-Haqq] *sum mila hakikata sari maluma kari tava Kaji Najarula Haka hakikata hamari likha mulajamata* [*malazamat*] *ki umaida* [*umid*] *ki*

Sri Patasahaji [Padishah] *miharavana* [*mihrban*] *kara hakikata upara dasakata* [*dast khatt*] *naurangavada kai phuramavai*.[653]

The Auspicious Perfection, Graciously Seated in All Forms, Maharajaji Hari Singhji, it has been penned by Qazi Muhammad Daʾim that he has been greatly exalted to inform you that the present statement of facts has reached him…It has been made known on the previous thirtieth [of the preceding month] from Qazi Nazr al-Haqq of the relevant information he had prepared in a statement of facts. Qazi Nazr al-Haqq had written to us on the statement of facts with the hope of diligence…
Sri Patasahaji has shown his benevolence and has ordered the sealing of the statement of facts in Aurangabad.

Qazi Daʾim would have briefly addressed Hari Singh, which underwent a transformation into an Indic baroque prose at the hands of the Rajasthani scribe. Qazi Daʾim went on to enumerate a list the grant of benefices worth 200,000 *dam*s (*jagirakai doi lasha dama*) for 30 *mahall*s (*tisa mahalata dama*) in the environs of Toda. Among these were included a *vatan* of 50,000 *dam*s (*pancasa hajara dama vatana*) for Hari Singh, and additionally, another 50,000 *dam*s for his mother (*Sri Maji ka hai so pancasa hajara dama*). As a courtesy, Qazi Daʾim conveyed his extreme happiness (*parama santosha hoyi ji*) on having the opportunity to endorse these claims and his reminiscences of Hari Singh (*hamrai apaka sumarana hai*). In this profuse baroque politeness to

[653] "Rajasthani translation of the Persian letter from Qazi Muhammad Daʾim to Hari Singh, *zamindar* of Lamba dated magha sudi 6, 1751 VS (January 10, 1695)," Doc. no. 207, *Khatuta hindi ahalakarana*, Bundle no. 2, Rajasthan State Archives, Bikaner.

which they were attuned, it is hard to say how much was added over by the Rajasthani scribe.[654] Qazi Daʾim also courteously concluded that all was well in his household and that he would write if there were any news (*aura hamarai gharamaha aisaki ja hai judamaina ki pavaralaiha so apakum maluma hai ji aura samacara raho igai sau pichai su lishugaji*).

In its ideal-type, different kinds of formal contracts such as *tumar* (rent-roll), *sanad* (mandate), *parvana* (permit, warrant, rescript), and other documents as well as their copies had to be notarized in the judge's presence through witnesses for them to have probative value.[655] These additional legal procedures prevented fraudulent transactions or violation of rules stipulated in the contracts reaching from the imperial court. Moreover, local groups whose revenues were being extracted had to testify at the judicial court to the fact that the process had not been illegally carried out or manipulations made in rent assessment, or land measurements. Or the fact that other claimants might have existed to part of the revenues of the said land had to be verified and checked against on-the ground-confirmation. Taking those matters into consideration, Qazi Daʾim had extracted the "statement of facts" (*haqiqat*) as he unambiguously conveyed to Hari Singh in this letter.

For imperial charters, patents, and mandates, detailed chancery procedures existed before they reached the local authorities or judicial courts. At the imperial court itself, they had passed through various bureaucratic regimes of verification with at least six different chanceries under the departments of *vakil-i mutlaq*, *divan*, *divan-i buyutat*, *khan-i saman*, *bakhshi*, and *mustaufi*. They

[654] In the translation of Persian letters, petitions, and documents, it was a norm to introduce the author's salutations in reported speech. The body of the letter was conveyed in direct speech to avoid any distortions as well as disclose what had been said according to its exactitude.

[655] For now, I am providing an ideal-type as exact procedures varied across documents, purposes, and chancery rules that changed occasionally.

made the following signature endorsements (*ʿalamat*): *qalmi numayand* (let it be penned), *biguzarand* (let it be submitted), *mulahaza numayand* (let it be inspected), *manzur darand* (may be sanctioned), *sabt numayand* (let it be entered), *naql bidahand* (let a copy be handed over). Their head clerks (*pishdast*) double-checked with their respective registration marks (*subut*), some in Arabic and others in Persian on the verso (*zimn*): *ʿalimtu ʿalayhi* (I have taken cognizance of it), *attalaʿtu ʿalayhi* (I have inspected it), and *waqiftu ʿalayhi* (I have inquired into it), *sabt shud* (entered), *vaqif shud* (noted), and *muttaliʿ shud* (fully informed).[656] Copies made immediately were kept for reference at the imperial court and the originals sent to the jurisdiction concerned.

When they reached the locale, these imperial mandates underwent further iterations. A detailed annotation (*sharh*) was fully rewritten giving the particulars of the case at the said jurisdiction.[657] The final transfer was approved through verifications by the news reporter (*vaqiʿa navis*). The details were again repeated (*ʿarz-i mukarrar*) for rechecking further errors and final confirmation before the actual imperial mandate was handed to the individual to whom it had been addressed. This is only a bare-bones description of the most minimal of all Mughal procedure. Additional entries had been made in the registers (*sar rishta*) kept at various levels: *ruznamcha* (journal), *avarja* (ledger), and *yaddasht* (memorandum) for internal chancery verifications to prevent any manipulations within the state machinery itself. Over a dozen times, various chancery officials had written *bi-nazr daramad* (came under the purview) and *manzur darand* (may be sanctioned) on the imperial mandate and in its local transmutations.

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[656] Khan, *Selected Documents of Aurangzeb's Reign*, ix–xiii. On chancery practices in other parts of the Islamicate world, see Guy Burak, ""In Compliance with the Old Register": On Ottoman Documentary Depositories and Archival Consciousness," *Journal of the Economic and Social History of the Orient* 62 nos. 5-6 (2019): 799–823; Rustow, *The Lost Archive*, 343–67; Busse, *Unteruschungen*.

[657] On different kinds of *sharh*, see Srivastava, *Siyaqnama*, 27–50.

In their own days, when an imperial patent (*farman*) was issued under the Padishah's imperial seal (*tughra*), an extensive documentary trail and detailed proofs of who and how they had handled the case were available in that jurisdiction as much as at the imperial court. When additions had been made, a mandate (*sanad*) was granted as in Hari Singh's case for additional revenue rights as compensation. Any permit or warrant was made by the imperial household courtiers through a rescript (*parvana*) as when an emendation was attached to the previously created grant.[658] At any given time instance, there were several such different documents attached that formed the ecology of legal claims.[659] When the contract lapsed or terms and conditions had been renegotiated, a new *farman* was issued and went through all those procedures once again. Old ones were struck down from the previous registers.

From the Padishah downwards, all were subjects of Hanafi law. His contracts too were governed by the same laws, though he had the prerogative to decide how to combine them for the public interest of fiscality and state affairs. Accounting for this reality prevents modern assumptions that the "legal" sphere belonged to the *qazi* and the "political" sphere to the Muslim rulers. Even a *farman* is a legal document—an imperial charter whose underlying text and intention strictly fit Hanafi norms. Indeed, it was the highest kind of legal document that could be generated in the empire. Aurangzeb ʿAlamgir's charters, patents, and mandates could create a proprietary right. It is a legal deed in both senses of the term: an intentional action on his part as much as a document supporting its legal enforcement. For jurists, imperial orders needed no notarization by the *qazi* since their authenticity was beyond doubt and would have necessarily been prepared

[658] On Mughal chancery procedures on rescripts until Shah Jahan's reign, see Mohiuddin, *The Chancellery*, 85–99. A detailed study of procedures during Aurangzeb ʿAlamgir's reign is still wanting.

[659] Individual loose documents in archives offer little context for the fiscal circumstances of the area concerned.

legally by the imperial chanceries.[660] The Padishah's contracts though came with self-notarization made by his imperial *tughra*—the *imam* self-attested it as he was a magistrate with general jurisdiction on religious and secular affairs. That capacity for self-attestation was a signal of his promise to his subjects.

Timurid imperial orders had to still pass through not only local bureaucracies, but certain types of mandates required that their veracity be checked on the ground as spurious *farman*s were occasionally fabricated. The chanceries prepared the *siyaha* (inventory) for the release. When a copy (*naql*) was drawn, the *qazi* endorsed them to give it probative value as a "true attested copy" (*naql muvafiq-i asl*). It was under the *qazi*'s purview and legal competence to generate additional proof (*hujjat*). Qazi Daʾim extracted the "statement of facts" (*haqiqat*) for Hari Singh's revenues. If there was need to verify counterclaims of other parties on the said land or anybody contested their claims by bringing a lawsuit (*rujuʿ*), Qazi Daʾim would have resorted to preparing a "status of the case" (*surat-i hal*). The local populace would be invited to testify (*gavah* or *shahada*) as a way of finding evidence (*subut*). Appropriately, their testified statements generated an acknowledgment (*iqrar*), a financial surety bond (*tamassuk*), a personal responsibility bond (*muchalka*), or a testimony (*mahzar*),[661] depending on the case. Timurid imperial charters, if they were associated with claims of others, passed under the supervision of the *qazi*, the *imam*'s deputy in judicial matters. In its legal minimality, the *farman* too was a binding agreement to respect the terms and conditions. It was open to contestation in case it impinged on other claims. If the imperial

[660] Emile Tyan, *Le notariat et le régime de la preuve par écrit dans la pratique du droit musulman* (Harissa: Imprimerie St. Paul, 1945), 79.

[661] On the Maratha use of *mahzar*s, see Vithal Trimbak Gune, *The Judicial System of the Marathas* (Poona: Deccan College, 1953). For a recent study on late Mughal and British-era *mahzar*s, see 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, no. 2 (2016): 379–406.

order's implementation could not be fully resolved on the ground, the imperial court would be asked for clarification on revising the distribution of usufructuary rights of all parties.

For all these notarized copies and agreements, an additional issue came up. The concerned parties would be intimated and given a true attested copy for safeguarding and proof. Moreover, for private transactions (*muʿamalat*) and legal deeds, the *qazi* performed the required notarization in the presence of *gumashta*s and *vakil*s who represented their principal. Their agreements, be they *brahmadeya* grants, sale and purchase of urban real estate and other private contracts, they all passed through the eyes of *qazi*s. Unlike internal chancery copies without seal, for documents requiring probative value, another kind of copy existed: the true attested copy (*naql muvafiq-i asl ast*) that *qazi*s performed for legal deeds.[662] Both the original bearing the seal (*asl*) and the notarized copy (*naql muvafiq-i asl*) had equal probative value as admissible evidence in litigations.[663] Any copy of a legal deed without the notarization had no probative value.[664]

[662] On notarization in Islamic law, see Tyan, *Le notariat*, 73; Norbert Oberauer, "The Function of Documents in Islamic Court Procedure: A Multi-Dimensional Approach," *Islamic Law and Society* 28 (2021): 1–78. On formulae (*shurut*), see Wael B. Hallaq, "Model"; Jeanette Wakin ed., *The Function of Documents in Islamic Law: The Chapters on Sales from Ṭaḥāwī's Kitāb al-Shurūṭ al-Kabīr* (Albany: State University of New York Press, 1972). On Mamluk procedures, see Christian Müller, "The Power of the Pen: Cadis and their Archives: From Writings to Registering Proof of a Previous Action Taken," in *Manuscripts and Archives: Comparative Views on Record-Keeping*, ed. Alessandro Bausi et al. (Berlin: Walter de Gruyter, 2015), 361–85; Christian Müller, "Écrire pour établir la preuve orale en islam : la pratique d'un tribunal à Jérusalem au XIVe siècle," in *Les outils de la pensée. Étude historique et comparative des « textes »*, eds. Akira Saito and Yusuke Nakamura (Paris: Maison des Sciences de l'homme, 2010), 63–97. Also see Maaike van Berkel, Léon Buskens, and Petra M. Sijpesteijn, eds., *Legal Documents as Sources for the History of Muslim Societies: Studies in Honour of Rudolph Peters* (Leiden: Brill, 2017). Also see Zameeruddin Siddiqi, "The Institution of Qazi under the Mughals," *Medieval India: A Miscellany* 1 (1963): 240–59. For studies on *qazi*s in regional settings, see Chatterjee, *Negotiating*; Hasan, *State and Locality*; Farhat Hasan, "Property and Social Relations in Mughal India: Litigations and Disputes at the Qazi's Court in Urban Localities, 17th-18th Centuries," *Journal of the Economic and Social History of the Orient* 34, no. 4 (1991): 851–77.

[663] William Bolts (1738–1808), merchant and alderman at the Mayor's court in Calcutta confirms this view: "A Mahomedan judge, or magistrate ; *appointed originally by the Count of Dehly to administer justice according to their written law*; but particularly in matters relative to marriages, *the sales of houses*, and transgressions of the Korān.—*He attests or authenticates writings, which under his seal are admitted as the originals, in proof*." William Bolts, *Considerations on India Affairs; particularly respecting the Present State of Bengal and its Dependencies*, vol. 1 (London: J. Almon, 1772), xvii. Emphasis added.

[664] Often, repositories and manuscripts contain copies of documents without seal whose authenticity remains doubtful. Many spurious fabrications were made under colonial rule, which need to be independently studied. Under duress,

Chanceries of other competent authorities like police (*kotwal*), military magistrate (*faujdar*), and governor (*subadar*) sealed their own documents as we saw earlier with Aurangabad's *kotwal*, Bhura who enforced the encashment of Rajput *hundi* with Chetan Das.

In their totality, all these were patents, contracts, deeds, and agreements made through Timurid public power and its state officers. Hence, seals of *amir*s, *faujdar*s, *qazi*s, *kotwal*s, and chancery and revenue officials were cast at the imperial court and issued against a "memorandum for the issuance of the seal" (*yaddasht bara-yi muhr*) and when discontinued for death, resignation, or dismissal, a "memorandum for the discontinuance of the seal" (*yaddasht bara-yi mauqufi-yi muhr*) was prepared by issuing authorities who in turn sealed them.[665] Each step of Mughal documentality was sustained by imperial regulations (*zavabit*) to generate evidence (*subut*) and proof (*hujjat*). These acts of leaving traces made state contracts legal and lawful.

Anquetil-Duperron was perceptive regarding the Mughal notarization he observed during his stay in the subcontinent, which is also why he made one of the earliest cases against despotism:

> Il n'y a pas des Notaires en titre d'office. Le Casi, le Scheikh eslam, le Seder, les Gouverneurs, les Docteurs renommés, les premiers du lieu signent un acte (avec leur cachet), & lui donnent la force qui lui est nécessaire. (Le Casi signant un acte est un vrai Notaire public).

forgeries were not uncommon as individuals and groups tried to ensure or even enhance their property claims endorsed by colonial officials in northern India.

[665] Fabricating false seals and forgeries (*khatt-i jaʿli*) were fraud investigated on high priority basis. The individual caught would be tried and the actual forged documents and fabricated seals confiscated to find the trail of all responsible.

Point de Greffe ou Regître public pour garder les contrats. On en fait tirer des copies authentiques.[666]

There are no notaries holding office. The *qazi*, the Shaikh al-Islam, the *sadr*, the governors, the renowned Doctors [of law], chief amongst the place sign a deed (with their seal) and give it the necessary force [of law]. (The *qazi* signing a deed is the true Notary public).

No Tribunal or Public Registry to keep contracts. One gets true copies made.

Through his French and Indian experiences, Anquetil-Duperron was perceptive to the distinction. There are many inconsistencies in Duperron's ideas since he did not know all the details on how probative value was generated for legal acts, deeds, and documents. There was no public register (*registre public*) or tribunal (*greffe*).[667] True attested copies were regularly made at the time of the contract or later if need be. These kinds of copies continued to prove the authenticity of legal transactions even when originals (*asl*) were lost. The *qazi*s would have kept records (*divan* or *sijill*) during their professional career that were not transferred to any higher jurisdiction of the Mughal State. Mughal subjects kept originals, and perhaps, asked friends or family elsewhere to keep copies under safe custody.

Under colonial rule, the office of the *munsarim* was used for head clerk of a court to mean the same as the registrar and used as late as the *Code of Civil Procedure 1908* passed by the

[666] Anquetil-Duperron, *Législation orientale*, 204. Emphasis added.

[667] Anquetil-Duperron's contemporary and the French jurisconsult and advocate at the *Parlement* of Paris, Claude-Joseph de Ferrière defines the office and functions of the *greffier* in the following terms, which is useful to understand what he had in mind: "La fonction de Greffier est de recevoir & d'écrire les Ordonnances, Appointemens & Jugemens, de la même maniere que les Juges les prononcent, sans changer la substance ; comme aussi les Requêtes des Parties, leurs offres, affirmations, insinuations & présentations. Ils délivrent les expéditions aux Parties, reçoivent les sacs, & mettent le procès à la distribution. Ils sont dépositaires des registres & des expéditions de Justice." Claude-Joseph de Ferrière, *Dictionnaire de droit et de pratique, contenant l'explication des termes de droit, d'Ordonnances, de Coutumes & de Pratique. Avec les jurisdictions de France*, vol. 1 (Paris: Babuty, 1762), 1002.

Imperial Legislative Council. Charles James Connell of the Bengal Civil Service defined that British civil magistrates had legal powers whereas administrative officials like "Munsarims and Sadr Munsarims help the settlement officer in the preparation of the required registers."[668] Colonial policy had made them into Anquetil-Duperron's registrar. No such post existed in Mughal times and the *munsarim-i purajat* regulated the affairs of suburban agglomerations given as imperial privileges. The British reinvented European institutions and attached new meanings to existing Persian terms. From being an administrator of civil affairs, the *munsarim* had become a mere head clerk filing the records of court cases. He was also made in charge of the registers called *daftarband*, which term had earlier referred to the internal records of Mughal imperial revenue collections nothing to do with being a public registrar. The Mughal *munsarim* settled agglomerations and collected taxes on trees and fruits in groves and did not act as a registrar of records and contracts between private parties. For internal consultation alone, the Mughal *daftarband* was not open as books of a registrar for subjects' checking their records.

Even today, South Asian citizens must get a "true attested copy" from "gazetted officers," to authenticate photocopies of documents, a practice—though nobody realizes it—whose origins lie in Mughal notarization. The British retained this Mughal practice since public documentary culture in the subcontinent was radically different to European ones where municipalities, town halls, and *Hôtels de ville* stored documents; the notary public or the *greffier* attached to them performed notarization. In Mughal cities, there was no public record of private transactions (*muʿamalat*). Even for public documents, copies had to be regularly notarized. All Timurid public power would do is provide the necessary institutional support for private agents to carry on their

[668] On the British use of *munsarim* in the Indo-Gangetic plains, see Charles James Connell, *Our Land Revenue Policy in Northern India* (Calcutta: Thacker Spink and Co. 1876), 93–4.

private transactions—it had no interest in exercising "archival control" over their private lives. The Mughal elite were represented by their *vakil*s whereas ordinary subjects came by themselves. Mughal guards and macebearers resorted to disciplining ordinary civilians assembled as they did not stand in a queue.

Through the indelible impression that these legal procedures had left on the minds of Mughal subjects, even the ubiquitous "true attested copy" has survived the vicissitudes of history and remains a source of much frustration for those running from pillar to post finding "gazetted officers" in contemporary South Asian bureaucracies.

Conclusion

In the Mughal Empire, contracts and orders were continually sent from the imperial center to elite military officers, police, judges, religious establishments, subcontractors, beneficiaries, *zamindar*s, Sufi shrines, and even the imperial household itself. Through this perpetual settlement and resettlement, the Padishah was always party to contracts with large number of subjects. Through this legal design powered by paper and horses, the imperial court and all subordinates were made to function like clockwork keeping everyone on their toes. In turn, the information of their activities kept coming back to the imperial center through various networks. This imperial-local nexus was regulated by *qazi*s as the deputies of the *imam* as well as imperial officers acting as governors and military magistrates posted across its realms. Even servants had been employed through written contracts—a kind of "openness" to contracting that other political formations in South Asia had never practiced. In fiscal terms, its counterpart was the continuous revision of rent assessments, salaries, emoluments, and revenue shares. Through these endless procedures of contracting, their renewal (with no tacit renewal allowed), and rescinding, the Mughal Empire was

held together under unitary dominion. No proclamation, promulgation, or edict had ever been issued to Mughal subjects as a collective. Nothing had been etched in stone. The Timurids deepened the socialization to Hanafi law through this contractual method of statecraft.

The imperial court as the nodal agency acted as a centrifugal and a centripetal force keeping the empire under its control through information and time coordination. Supervision was the key to Timurid public power's grip over multiple overlapping jurisdictions. A question often not asked is how Aurangzeb ʿAlamgir knew the whereabouts of his officers. Their activities were closely monitored by the imperial court that approved their itinerary of marches and halts with calculations of time-distances, bathing stations, and encampments for several months in advance. Like pawns on a chess board, the imperial court tracked their movements (*harakat*) across the subcontinent. Any changes, even a deviation from the prescribed itinerary or delay unless justified by valid reasons such as natural calamities, injury, etc., led to the day's salary being deducted from future benefices. Through this ability to continually track their whereabouts and behavior, the Timurids kept check on their subordinates in a centralized form that no other state forms had been able to do in South Asia's precolonial past. The supervisor's (*mudabbir*) acumen encompassed the triad of *riʾasa ʿamma*, *tadbir*, and *siyasa*. His strategic thinking reflected a global vision of state affairs, an aim to pre-empt future events and anticipate consequences of present actions, and an intellectual appreciation for the subtleties of opinions and viewpoints put forward for his consultation.

These inter-networked jurisdictions were a nested hierarchy of a complex chain of command. They had to be kept interlocked without letting them break off from each other, get disjointed from the nodal agency, or break apart and connive against Timurid public power. The plundering of Toda and its investigation is only one among many points of pressure or minor crises that reveal the hidden nature of this empire where many jurisdictions came into play that

Aurangzeb ʿAlamgir had to delicately handle and see to it that the interests of the Mughal State's permanent tenants, the peasantry—who had no jurisdiction, were preserved. All these ground realities could not be allowed to turn adverse.

In the hidden allegories of miniatures, Aurangzeb ʿAlamgir is portrayed as a mounted cavalryman. At once, he holds the bridle and the reins of his empire in his left hand with an iron fist in a velvet glove, guiding the galloping horse in the right direction. In his right hand is the lance of his politico-militaristic craft. The lance's angle reinforces his firm grip over power in its non-combative mode. With his sword covered under its sheath, coercive power is displayed as something hidden, always ready to be exercised but kept still in non-combativeness. Following Mawardi's suggestion, those weapons were notably displayed at the *mazalim* judicial proceedings to reinforce the awe-imposing character of state power and its capacity to resort to violence, if need be, for the sake of justice. Display is performative and metaphorical—its presence is an attestation of the commanding nature of Timurid public power. When was the opportune moment to use violence, if not at the last resort? How to determine the last resort was the real strategic vision whose balancing act was the daily drama. Imamate demanded of the ruler an extraordinary caliber to grasp the calculus of strategy, secrecy, prodding, disciplining, shrewdness, and manipulation. It was this skill Aurangzeb ʿAlamgir deployed. Irrespective of where he was, he kept channels of information open to know what was happening on the ground. We have not had occasion, though, to study a crucial aspect of the Padishah's craft: by what methods did he manage the consultation-decision-execution nexus since his knowledge of state affairs was always mediated by diverse information sources and their representations of events, which he could not fully trust?

In the Indic royal convention, this unitary dominion was depicted as the "one umbrella paramountcy" (*ekacchatra*) in whose shadows his subjects lived. Aurangzeb ʿAlamgir's swords and daggers were inscribed with the *chatra* (umbrella) to symbolize this principle. One of them was engraved with the Qurʾanic verse: "Truly We have opened up a path to clear triumph for you" (*inna fatahna laka fathan mubinan*).[669] Both *ekacchatra* and *riʾasa ʿamma*, reflect idioms of unitary dominion in different worldviews that had long met each other half-way because he was *imam* and *Sri Patasahaji*.

Chennamma, the queen of the Keladi *samsthana* in Malnad had fought against the Mughals. Keladi was forced to accept Mughal suzerainty and pay a hefty annual tribute of 800,000 rupees. Her *vakil*, Ankoji met the Padishah and "kissed his threshold" as a sign of submission.[670] In the late eighteenth-century *campu* poem, *Keladinrpavijayam*, the Kannada poet, Linganna had no qualms in memorializing that image of Timurid unitary dominion:

> *avarangajebanoppuva bavarade bavanna patushahara muridu*
>
> *tsavadind ekachchhatradol avanimandalavanaldan ativikramadim*[671]
>
> Aurangzeb who wouldn't accept anybody being outside his dominion broke the power of fifty-two[672] Padishahs and ruled the whole of the earth—with pomp and glory—and great bravery under one umbrella paramountcy.

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[669] Qurʾan, 48:1.

[670] Ishwar Das Nagar, *Futuhat-i ʿalamgiri*, 165.

[671] Linganna Kavi, *Keladinrpavijayam*, ed. R. Shama Shastry (Mysore: Government Branch Press, 1921), 143. For a study, see M. Chidananda Murthy, "*Keladinripa Vijayam* – A Historical Poem," in *Studies in Keladi History*, ed. G. S. Dikshit (Bangalore: The Mythic Society, 1981), 119–24. Also see Keladi Gunda Jois, *The Glorious Keladi* (Mysore: Director of Archaeology and Museums, Government of Karnataka, 2011).

[672] Fifty-two indicates an Indic numerological calculation. Linganna uses the Dakkhani *bavan* to denote fifty-two. Throughout his description of Keladi's conflicts with the Mughals in the ninth canto (*asvasa*), Linganna brings a flourish of Persian and Dakkhani vocabulary to create an alienating effect of the distance separating the Karnata region

How did Linganna recall this historical memory? This verse is a textual adaptation from Chennamma's adopted son, and the Keladi king, Basappa Nayaka's Sanskrit encyclopedic work, *Sivatattvaratnakara* composed in the early eighteenth century:

> *cakara sasanadhinam sarvam samantamandalam*
>
> *tatah ca sarvayavana sarvabhauma padam gate*
>
> *nrpasresthan dvipancasat sankhyakan balavattaram*
>
> *unmulavairitam praptum chatradhipatisabditam*[673]
>
> He governed state affairs with an assembly of feudatories and reached the stage of universal dominion as the head of all the *yavana*s. Having forcibly uprooted fifty-two noble kings, he attained the lordship of one umbrella paramountcy.

Small kingdoms at the margin of empire increasingly felt the overwhelming impact of Timurid expansion in the seventeenth century. Such historical memories of Aurangzeb ʿAlamgir's "unitary dominion" circulated in vernacular literatures.

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from Delhi's ruling *turuska* dynasty (*dilliyanalda turuska vamsavivaranam*).

[673] Basavaraja of Keladi. *Śivatattva Ratnākara*, ed. S. Narayanaswamy Sastry, vol. 1 (Mysore: Oriental Research Institute, University of Mysore, 1964), 293.

Conclusion

The Axis of the *shariʿa*: Lawful Nature of Timurid Public Power

Since the emergence of modern historiography on Indo-Islamic political culture in the late nineteenth century, there has been, perhaps, no theme more controversial than the place of the *shariʿa* in the subcontinent's past. It goes without saying that the modern portrait of Aurangzeb ʿAlamgir has been painted with broad brushstrokes. His image has often been tied to, in historiographical debates and the contemporary public sphere, as occupying a unique phase of "Muslim orthodoxy." This view, as we have demonstrated in this study, is untenable as such interpretations have *in toto* swept aside all the building blocks that went into normatively adhering to the *shariʿa*: the detailed analysis of the legal doctrine of Hanafi jurists, the Mughal State's legal norms, and the social experience of urban Mughal subjects that we have analyzed throughout the dissertation. Unlike the Ottomans or the Mamluks, the Indian Timurids have always been considered an outlier Muslim State. Some sort of unknown and unwritten local customary practices is supposed to have governed the lives of the multitude beyond the state's desire to extract revenue from them. This view is a late colonial perception popularized by Henry Sumner Maine that India was "singularly empty of law." Moreover, historiographical assumptions have also been based on the idea that Islamic law was difficult to apply in religiously plural societies of the subcontinent—an "orientalist" imagery that persists to this day—that one of the core elements of Islam is incompatible with living with non-Muslims. Rather, as we have demonstrated throughout this dissertation, Islamic law has had a profound influence on South Asian societies and belongs indelibly to the past as much as the present of the subcontinent.

Hanafi law—northern India's preeminent legal system in the second millennium, had gradually spread through centuries of Indo-Islamic rule. Our interpretation has shown that Timurid public power was a distinct form of decision-making centralization and information economy in the second half of the seventeenth century. Mughal historiography's focus on everything except Hanafi law has masked the empire's legality. The Mughal Empire's legal design mirrors the myriad ways in which the legal system worked for ordinary civilian subjects in major cities and towns. The legal normativism we have analyzed is an overlapping relation between individuals and communities on the one hand, and on the other, rulers, state agents, and military officers. In a snapshot, these legalized relations of obligations, claims, rights, were what formed the legal design when the empire achieved its greatest extant c. 1700. The judicial settlement too had been complete by then with *qazi*s holding regular court proceedings virtually in the smallest towns across the length and the breadth of the empire.

The openness of the Timurids was a carefully crafted discourse where Hanafi jurists had framed laws for public power to be legal and in turn as a lawful state get it to execute its responsibility and promise to protect non-Muslims. It goes without saying that the possibility of Hanafi law flourishing in the subcontinent is deeply tied with state power wielded by rulers who belonged to the Hanafi school (*madhhab*). Hindustan lay at the crossroads of a transregional Islamic world, especially, with its deep connections to Central Asia and Iran.

We have also articulated a different understanding of precolonial state formation through the contractual regime that made for the real success of Islamicate state forms in the second millennium. Through the legal consciousness of ordinary town dwellers and how the law was legible to them, we have relativized the meanings of sovereignty away from courtly cultures to the urban public spheres. For the imperial court itself, Hanafi law was more than law and sustained its

state system of payments, monetary and price policies, accounting, and all the elementary aspects of its fiscal architecture. Timurid sovereignty was deeply tied to paper contracts authenticating truth: evidence, proof, and verification. Such a contractual economy gave the Timurids an unparalleled state capacity. Hanafi law opens new possibilities to rethink the nature of the Mughal State since that law pervaded social, political, and public life for many, and, for some amongst them, it was central to their religious life as well.

In a major departure from existing historiography, our dissertation has unearthed the following legal and political realities of the late-seventeenth-century Mughal Empire. First, we have unequivocally demonstrated that no allodial property rights existed on agrarian tracts; all land was nominally owned by the Mughal State. Second, we have mapped urbanization and the graded set of urban property laws using the Hanafi concept of *ʿaqar* (immovable property). Different types of land laws applied in walled cities, gardens, state mansions, and suburban agglomerations. All property relations are legal relations. Third, we have clarified, where possible, several errors that Mughal historians have made in the interpretation of property rights, escheat provisions, rent-free grants, lease agreements among others. We have rectified them by returning to the Hanafi rationale on whose basis the legal regime operated. Fourth, we have analyzed the daily workings of the state-market nexus that were essential to the monetary and the financial architecture of the Mughal State. Representation, intermediation, and agency played a crucial role in both political and commercial agreements. Fifth, we have explained the nature of high centralization at the imperial court, which coordinated information flows and timely bureaucratic actions. Resources, wealth, and money stocks were spatially distributed while decision-making powers were consolidated at the "center." By the early 1700s, these mechanisms of oversight on revenues and surveillance of state agents gave the Mughal political formation the semblance of an empire. Finally, we have

uncovered how the leading actor among all our *dramatis personae*, Aurangzeb ʿAlamgir exercised his public power while accomplishing the tasks of *siyasa*. Hanafi contractual law was the overarching principle behind all these aspects of conducting state business. Overall, we have proposed an institutional model to understand power, law, and political economy in the workings of Timurid sovereignty.

In concluding the dissertation, we discuss how the legal system of the Mughal Empire opens major avenues to clarify two contentious historiographical debates on precolonial social and economic realities. The first concerns the nature of religion, caste, and community as identity markers before colonialism. This question has been deeply tied to the idea of "communalism" and the nature of Muslim statecraft. The second deals with the Mughal decline not from the perspective of its causes but its legal consequences on incentive structures and public infrastructure. For now, we limit our focus to the core regions of northern India.

Textures of Fragmented Identities in an Ambient Social Environment: The Legal Recognition of *jati*/*qaum*

Timurid statecraft was not "communal" as sometimes understood today for the three following reasons: non-representative nature of the Muslim State, non-instrumental relation to religion—Islam or others, and the legal recognition of fragmented local *jati* and *qaum* identities.

The Muslim State was not the representative of private Muslim interests collectively as has often been imagined. Imamate was the postprophetic leadership of the Muslim community to ensure they followed their ethical and religious obligations, and, through various means, discipline their behavior as we have seen. Therefore, general instrumentalization of religious identity was

not the ideological principle governing the Mughal State. This is not to discount the violent nature of precolonial societies, states, and their ambient religious circumstances. No doubt, a few well-known riots had happened in the seventeenth century, which is hardly surprising. The amount of energy, ink, and paper middling officials spent in diffusing and preempting untoward incidents has been unknown to historians because the Persian chroniclers have nothing to say of ordinary lives as their description would sap heroic narratives of their rhetorical force.

On the ground, state agents, especially, judges tried diffusing tensions rather than stoke them. Ordinary issues like land disputes could go out of hand, which had to be prevented from taking a communal turn. Investigation, evidence, and settlement were the means through which state agents tried to regulate behavior. Amer's judge, Qazi Muhammad Saʿid's deputy (*naʾib qazi*), Muhammad Baqar wrote to Hari Singh on a case of insulting the Qurʾan. Godha Balai had abused the Qurʾan and he had been in turn slapped on the face. Baqar requested Hari Singh to investigate the matter from his side speaking to Godha Balai, which might have looked like a severe dressing down in reality and not polite speech. Baqar was looking at the matter on the other end. He preferred Godha Balai be handled by Hari Singh or else be handed over to Amer's judicial court for proceedings against him.[674] Indeed, shortly afterwards, Muhammad Baqar was killed, though whether this incident was the cause is not possible to establish for now. Qazi Saʿid requested the Rajputs to arrange the blood money (*diya*) for Baqar's homicide. In the Rajput chancery, Mishraji got the compensation paid to Baqar's brother, Saif Allah after several months.[675] By using

[674] "Persian letter from Muhammad Baqar, Deputy Judge of Amer to Hari Singh," Doc. no. 76, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*), Bundle no. 3, Rajasthan State Archives, Bikaner.

[675] "Persian letter from Qazi Muhammad Saʿid to Bishan Singh," Doc. no. 263, *Khatuta maharajagana*, Bundle no. 1, Rajasthan State Archives, Bikaner.

baradari, *qaum*, and *jati* channels, judges would prevent legal matters leading to untoward conflicts wherein an individual crime did not flare up into a "communal" conflict. This balance was necessary to avoid various communities and their leaders mobilizing kith and kin descending into violent brawls or ugly rioting. Insulting the Qurʾan required lawful punishment; that could become an easy rallying cause for co-religionists if not regulated by concerned legal and religious authorities. Human passions and interests are irrational drives whereas law is reason.

In another case, the news reporter of Khairabad reported that the local *jagirdar*, Rao Chattar Singh Sisodia had destroyed the mosque and insulted the local *qazi*. The Rajputs sent a conciliatory letter to ʿAbd Allah Khan on Chattar Singh's behalf that these accusations were false. The Nizam al-Mulk sent a letter to Jumdat al-Mulk informing that on his arrival at Khairabad, he had come to know that the mosque was still standing and the *qazi* was discharging his duties as usual. The news reporter had made a false report against Chattar Singh; charges were withdrawn and his *jagir* restored.[676] A copy of the letter was shared with the Rajputs upon completion of the inspection.

State agents did not jump the gun when such incidents were brought to their notice. Mughal society was extremely violent due to its inherent militaristic nature, social stratifications, and deeply unjust economic disparities. That did not mean Timurid public power desired violence on the streets nor did it have anything to gain from rioting except the disruption to its cherished assumptions of what order meant. Under exceptional circumstances, Aurangzeb ʿAlamgir had ordered the demolition of two temples managed by political rivals. That never meant he wanted

[676] "Internal chancery draft of Persian Conciliatory letter sent by Jai Singh II," Doc. no. 524, *Miscellaneous Persian Papers concerning the Officials* (*mutapharrika parasiyana pepara mataliba ahalakarana*), Bundle no. 2, Rajasthan State Archives, Bikaner.

civilians to rally in the name of religion, his or anybody else's. The reason for such non-instrumental relation to religion was a product of the fact that the Muslim State regulated Muslim ethical behavior and did not enhance their private interests. Social, legal, and political surveillance were central to the way the Mughal social fabric was regulated in towns and cities.

In public life, individuals did not self-identify as "Hindu" or "Muslim"; they identified themselves by the primary legal category, *qaum*, which subsumed *jati* within it as well. Unlike colonial historiography, in precolonial historiography, legal discourses and the legal sphere of Islamicate states have not been privileged as the sites to analyze ethnogenesis, identity, and caste markers. This difference has allowed a perception that "caste" was an invention of the encounter between the colonizer and the colonized, a position that poses challenges to explaining precolonial community identities.[677]

Legally, the Mughal State recognized the existence of ritual *jati* distinctions and associated professional affiliations as *qaum*. The generic term for the "Hindu" that Persian chronicles employ, *ahl al-hunud*, is a descriptive category for the totality of intra-*jati* and inter-*jati* relations. The "Hindus" represent different communities, castes, and sects. They are considered together as a "people" (*ahl*) like Christians and Jews, who are the "people of the book" (*ahl al-kitab*). "Hindus" too are a people due to a family resemblance with other religions that include internal segmentations. Hence, it was possible to consider all of them collectively as the "protected communities" (*ahl al-dhimma*) of the Muslim State. *Qaum* was the ascriptive legal category that was officially endorsed for identifying oneself in state-community-individual interactions. These

[677] See Susan Bayly, *Caste, Society and Politics in India from the Eighteenth Century to the Modern Age* (Cambridge: Cambridge University Press, 1999); Nicholas Dirks, *Castes of Mind: Colonialism and the Making of Modern India* (Princeton: Princeton University Press, 2001). For a critique of this view, see Sumit Guha, *Beyond Caste: Identity and Power in South Asia, Past and Present* (Leiden: Brill, 2013), 16.

fragmented and fragmentary local realities reflected the work of the state on the ground. These localized ethnic affinities, regional belonging, and professional affiliations were at the core of managing social realities. The concept of *qaum* was the Mughal meta-category that subsumed endogamous *jati* orders within it. The emergence of modern "caste" as a nominal term has displaced *qaum*, the legal category prevalent in Mughal paperwork.

In the Deobandi scholar, Saiyid Husain Ahmad Madani's analysis, the word, *qaum* in the Qurʾan refers not specially (*makhsus*) to Muslims, but to non-Muslims too based on lineage and genealogy (*nasab*), locale (*vatan*), and profession (*pisha*).[678] The Timurids recognized *qaum* as an equivalent of *jati* from the Islamic perspective since Muslims as much as non-Muslims lived lives based on corporate affiliation as much as affective filiation. In western India, *khum*, a vernacular variant of *qaum* was well-known.[679] When closely examined, legal identification does not cross this bandwidth of *qaum* where religious or *varna* normativity do not come to play. Everyone belonged to a *qaum* reflecting lineage-locale-profession nexus in Mughal society. Local territorial belonging is represented by *vatan*/*desa* at the intersection of *jati*/*qaum*. Local country-ethnic tie ups remained strong when we descend below imperial governance.

In daily realities, individuals, *panch* heads, guild leaders, and communities or even as a village took recourse to state agents in northern and central India. The *jati*/*qaum* categories we find in documents are all utterances of demotic speech rendered in Persian. They changed from one locale to another or even from one person to another in the same city. Unlike chronicles that had cosmopolitan circulation among a miniscule elite, individual documents are testimonies of

[678] Saiyid Husain Ahmad Madani, *Muttahida qaumiyat aur Islam* (New Delhi: Qaumi Ekta Trust, 1972), 21–2.

[679] Guha, *Beyond*, 28. For a detailed list of variants of "social identification" employed to produce identity papers for Mughal soldiers in the Deccan, see Dayal, "Making," 916–7. While Dayal does not say so explicitly, no mention is made of "Hindu" and "Muslim" in the documents.

ordinary subjects who were asked to self-identify their name, father's name, occupation, clan, and caste. These entrenched identities are not the invention of a "colonial bureaucracy" preparing census records. Instead, Mughal State agents, especially, judges, who were all part of the local social fabric, recorded them. They were expected to know local customs (*ʿurf*). As the *FA* says, the judge's scribe (*katib*) should write down these details "without addition or subtraction" (*min ghayr ziyada wa nuqsan*).[680]

Hence, wide-ranging terms like *zunnardar*, *mahajan*, *bohra*, *byopari*, *khatri*, *teli*, *ahir*, *kahar*, *jat*, *navar-baf*, *mina* among others found in documents depict *jati* consciousness and distinction that deeply interacted with the Mughal State in the form of self-identification. Muslims too identified by *qaum*. They could be identity markers like Qazi and Saiyid among the elite. Lower down the order, professional, ethnic, and clan affiliations were also identity markers. Since *qaum* was an identification under oath, one could not misrepresent as belonging to another *qaum*, which was perjury in Hanafi law. Variations existed, but they remained local; many knew each other's *jati*/*qaum* affiliations in their own locales. "Caste" was a social reality that had official legal sanction and the Muslim State preserved the *jati* and the *jajmani* systems as it had no interest in interfering with kinship, lineage, and professional relations. When the identification of individuals in legal documents happened through specific clan names such as Rajput, Chaudhry, Chauhan, or professional affiliations like the "coarse cloth weaver" (*navar-baf*), we cannot tell if the person is "Hindu" or "Muslim" except by first name. In Mughal official parlance, religion was a belief structure and not a legal category for identification. Judges had been appointed largely from the same families living over generations—not because the position was hereditary as is often

[680] Nizam et al., *FA*, vol. 3, 311.

assumed—as they had accumulated legal experience of the local realities (*vatan*/*desa*) and appreciated the nuances of interacting with communities, individuals, and caste heads. These could include a knowledge of peculiar ritual practices, vernacular ways of speaking, and beliefs and attitudes as much as the capacity to be attentive to "subaltern" speech acts.

Since the idea of *qaum* was larger, it could overlap with other categories such as professional delineations that give away one's *jati* too. Caste was not an amorphous fluid category of identity in the Mughal Empire, but a proper legal category known to Mughal subjects in its two variants: *jati* or *qaum*. The ethnogenesis of "caste" needs to be read alongside an interaction with Islamic legal institutions. The debates in the historical sociology of caste have hardly engaged with Islamic legal institutions as having shaped caste over the course of the second millennium. The umbrella term, *qaum* was extensive in nature. What Timurid public power would not do is create overarching administrative classifications of different *qaum* categories. Beyond the legal sanction of social realities, state power was not geared towards discursive domination.

This co-constitution between legal institutions and individuals also requires an in-depth study since caste, ethnic, and religious identities did not exist outside but within the Muslim State's overarching legal design. The Padishah, first among unequals, was of Timur's patrilineal descent (*nasab*). Once, his trusted aide, Yar ʿAli Beg made a *faux pas* in his presence countering that a particular legal opinion was unreliable as a source of law since it was of Turani origin. Quick came Aurangzeb ʿAlamgir's response: "We are Turani" (*maham turani im*).[681] Yar ʿAli Beg was told to never underestimate Turani intellect. Turani to the core, even doubting a legal opinion hurt the Padishah's *qaum* pride!

[681] Khafi Khan, *Muntakhab al-lubab*, vol. 2, 378.

The doctrine of the Muslim State in the subcontinent's history was one of public power. It was not the use of public power for instrumentally enhancing private Muslim interests exclusively, which is why, Indo-Islamic political culture had never given rise to "communalism." Muslims and non-Muslims had all been treated as a single class of subjects and their ordinary lives depended largely on caste-clan and socio-economic hierarchies rather than "religious identity." Communalism is a later problem of the nineteenth century onwards when religious identities were instrumentalized for political gains in colonial India. "Communal" representation, education benefits and competitiveness between upper castes as much as the Hindu and the Muslim elites for positions within the colonial bureaucracy, controversies over language and script such as the Hindi/Urdu divide, were not possible in the seventeenth century. Indo-Islamic historiography has tried in vain to solve the nineteenth century riddle by indicting a few Muslim rulers, most notably, Aurangzeb ʿAlamgir. Communitarian relations were part of a complex set of political and social hierarchies in Mughal societies. Caste and religious identities did not constitute *sites* of political action as we know them today. Standard "secularist" readings of the Mughal past invariably deploy monolithic categories of the Hindu and the Muslim, erasing the underlying reality of these fragmented communities living under social stratification.

The Vacuum of Centralizing Timurid Public Power:
Legal Consequences on Public Infrastructure and Incentive Structures

While the causes of Mughal decline have been studied, what were the legal consequences of the fragmentation of the Mughal Empire (not India as a unit of study)? What happened to the contractual rights and their upholding with the vacuum of this legal public power in Hindustan from the 1740s onwards? A less recognized facet of this military-fiscal state is the distributive-

security state it had been, notably, for the urban centers of Hindustan. Taking a few examples, we ask a set of questions on the interlinkages within specific seventeenth-century economic geographies to address the possible skewedness that would have appeared in the eighteenth century.

More than a thousand kilometers away from the Deccan, Aurangzeb ʿAlamgir's imperial court had regularly appointed *faujdar*s and made personnel available for additional security, managed the operation of the workshops (*karkhana*), regulated the use of canal water for public needs and garden irrigation as much as conducted periodic dredging of the rivers prone to silting in all cities, even as far as Delhi, Srinagar, and Lahore. The quality of urban infrastructure and its maintenance depended entirely on state revenue allocations. Delhi's Superintendent of the water canals (*darugha-yi ab-i nahr*) in cooperation with the Rajputs had repaired the urban drainage systems in 1688. Upon receiving Aurangzeb ʿAlamgir's orders, Bishan Singh replied that he was working with Agra's Superintendent of the household (*divan-i buyutat*) in getting the boat bridge repaired in 1694.[682] Moreover, Yamuna sand dredging and ditch (*hauz*) repairs was given to the Rajput charge. The state defrayed expenses incurred from its Mathura treasury in 1694. What happened to public infrastructure maintenance by the mid-eighteenth century? Was there a lull in economic activity? That could have a severe impact on labor employment, the production and consumption of lime, sand, and gravel as much as a slowdown in public works. Indeed, such problems began appearing elsewhere too. During his viceroyalty of Multan, Prince Aurangzeb had made much progress in getting the port of Thatta desilted in Sindh. By the 1740s, the Indus' mouth in the Arabian Sea had silted closing off the riverine-maritime traffic. Moreover, Nadir Shah's

[682] "Internal copy for chancery archiving of the *ʿarzdasht* sent by Bishan Singh to Aurangzeb ʿAlamgir," Doc. no. 234, *Miscellaneous Persian Papers concerning the Maharaja Sahib* (*mutapharrika Maharaja Sahaba pharasi Jayapura*), Bundle no. 1, Rajasthan State Archives, Bikaner.

Afghan armies diverted the land trade through Qandahar and thus significantly weakened Lahore's prominence as a trading hub. These diversions reduced the finances the city accrued from customs.[683]

In Southwestern Delhi, Kapashera was the major cotton market with nearby grazing grounds where the imperial pack animals were parked. Next door, cart manufacturing was the primary activity. The whole of today's South Delhi converged around an economy of pastures, grazing lands, grass cutting and animal feed preparation extending further south to Sohna, Sikandarpur, Bahadurpur, Palwal, Pingore, Bawal, Rewari, Kotkasim, and Tijara. At Khanpur (next to today's Sainik Farm), Kunwar Ram Singh's *vakil* had bought fifteen *bigha*s of garden land in 1661.[684] The same property had been under dispute in 1639 just before Shahjahanabad's inauguration between Fatha Khatun and Nathu who made peace with each other (*razinama*). When they bought this land, the Rajputs were also handed over the 1639 agreement papers as they had to have proof in case of future litigation from neighbors. The Rajputs brought workers (*riʿaya*) further south from Tijara and Rewari. Vitthal Das informed Kalyan Das that Mundawar's peasants south of Kotkasim were headed to Delhi.[685] When they reached Khanpur, they took a night's rest. At the break of dawn, some of them made the last leg of the several hours' journey of 17 kms to Jaisinghpura on bullock carts and on foot, probably singing vernacular tunes to relieve the boredom of passing through ruined forts and villages. We shall never know if they were impressed by the ruins of Tughlaqabad, Jahanpanah, Hauz Khas, and Lodhi Tombs the way we are today. Perhaps

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[683] William J. Glover, *Making Lahore Modern: Constructing and Imagining a Colonial City* (Minneapolis: The University of Minnesota Press, 2008), 12.

[684] "*Baiʿnama* (sale deed)," Doc. no. 325, *Khatuta ahalakarana*, Bundle no. 1, Rajasthan State Archives, Bikaner.

[685] "Rajasthani letter from Vitthal Das to Kalyan Das," Doc. no. 796, *Amera abhilekha*, Bundle no. 3, Rajasthan State Archives, Bikaner.

they saw them as matter of fact: time (*kala*) had consigned the bygone glories of Delhi's long list of kings to oblivion. Since the rural folk had travelled so far from the hinterlands, often they would also be made to work in Delhi for a while before it was time to go back on the reverse traffic.

This two-way traffic between Sambhar and Delhi crisscrossed at several junctures. Sometimes Ajmer's lime (*chuna*) and Sambhar's salt (*khor*) were packed on this caravan trail. In the 1660s, the Rajputs bought carts that cost 13 rupees each at the Kapashera market. And, at times, the imperial caravan too was on its way to Manoharpura to collect supplies. On January 28, 1667, Aurangzeb ʿAlamgir ordered Shaikh ʿAbd Allah to transport the imperial cattle from Kapashera for grazing in the direction of Kotputli. At Manoharpura, Dilawar Khan took charge of the imperial caravan trail.[686] The Padishah had notified him to personally convey to the local *divan*, Lal Chand that he had refused his transfer request for now and would consider it at a later date. Manoharpura officials were expected to take care of the imperil caravan's fodder, water, and rest needs against the payment of those expenses.

How did this economic geography of human-animal-environment symbiosis evolve over the course of a century since Shahjahanabad was inaugurated in 1639? On May 10, 1738, Delhi was under a military occupation for the first but not the last time since Timur's sacking in 1398. Though, Delhi had grown unrecognizable with the last walled city to come up in its environs. In the summer of 1738, were the village folk willing to go to a city they called Jahanabada ("Abode of the World") under military occupation by an invading army? Was there any work left to do in Delhi's scorching summer heat except perhaps piecing together the remnants of an unurbane life of the living amongst the dead after such an historic event? Indeed, no study exists of the economic

[686] "*Vaqiʿa* dated 12 shaʿban julus 9 (January 28, 1667)," in *A Descriptive List of Akhbar-i-Darbar-i-Mualla*, 62.

shocks that would have reverberated across Delhi's surrounding peri-urban and rural political economy. Such an event need not be studied for eventfulness (*histoire événementielle*) focused on military skirmishes nor taken as yet another incident in the passing of the Mughal Empire.

The study of Hanafi law in the seventeenth century also amplifies why the eighteenth-century crisis would be one of upheaval for late Mughal subjects in northern India as their proprietary and contractual regimes were undermined. Timurid public power's collapse would have created difficulties in procuring adjudication. The vicissitudes of *qazi*s and their families have yet to be studied. The judges also took care of the city's orphans and put them to work. What impact did their weakening hold have on urban petty crime and unruliness? A few decades ago, Muzaffar Alam had argued that the "crisis" troubled urban dwellers and *qazi*s who stood by imperial interests while being attacked by agrarian chieftains.[687] Our concern is not which military groups were successful at becoming regional satraps on the ruins of the Mughal Empire. Those points of transition would have been one of extreme distress for urban dwellers living in Agra, Ujjain, Mathura, Lahore, or Burhanpur in the face of a crumbling state power.

Economic geographies of none of these major cities of northern and central India picture in historiography. Moreover, even when economic prosperity has been argued for the eighteenth century, it is primarily for coastal regions such as Gujarat and Bengal leaving behind much of the Indo-Gangetic plains and Central India—the heartlands of the Mughal Empire since the late sixteenth century. Agrarian prosperity unfolding through urban decline seems an odd assumption to make. Highway robbery and crime most likely went up as intelligence sweeps and security clearances could no longer be issued by the Mughal State on the highways of the empire. Mughal

[687] Muzaffar Alam, "Aspects of Agrarian Uprisings in North India in the Early Eighteenth Century," in *The Eighteenth Century in India*, ed. Seema Alavi (New Delhi: Oxford University Press, 2002), 102.

officers also offered a "security blanket" and military escorts to the *banjara*s controlling long-distance food grain and salt trade. What happened to this security state? Security and public goods can hardly be considered insignificant since economic activities, market operations, and regional interlinkages are impossible without state backing, very much so in a military-fiscal empire.

The Mughal State was a distributive-security state that played a larger-than-life role in urban and peri-urban civilian lives. Given all these ways in which imperial governance played a central part in the political economy, revenue allocation arrangements for recurring investment, and public infrastructure, perhaps revenue diversion to increased military spending led to urban deterioration. These questions cannot be considered less significant for an historical analysis of the Mughal political economy since they were the building blocks of the subcontinent's geographical realities. Cities, suburbs, and their adjacent hinterlands formed an economy of their own while also having transregional interlinkages beyond their vicinities. These major dislocations would have had cumulative negative effects that await a detailed study.

Our assessment of Mughal fiscality through the nominal ownership of land opens the seldom understood consequences of the creation of allodial property rights under British rule. Since everyone from the Mughal State to the peasants lived off the revenue parceled out amongst them, who should become the rightful owner of allodial land became the question: tenants, *khud kasht* or *pai kasht* farmers, *zamindar*s, *jagirdar*s, *altamgha* pretenders, *madad-i maʿash* holders—even if the Mughal State had been removed from the equation—by the early nineteenth century. Many rightful claimants existed to usufruct (*manfaʿa*) of any land parcel. The *pai kasht* peasants who did not possess permanent lands tilled different lands year after year. Where would they go if not end up as the *zamindar*s' tenants? Pasture lands (*dihat-i raʿy*) and wastelands (*banjar*/*mawat*) were commons regulated for the public good. Steep fines were imposed on illegal encroachment

of pastures. Once, Nanak Chand and other *sarraf*s were grazing their cattle illegally. The cattle were confiscated and released only after paying the fine.[688] How were these grazing lands misused, misappropriated, or privatized as Timurid public power weakened? That is, the tragedy of the commons and free ridership on hitherto public goods might be the major eighteenth-century story. Solving this conundrum marked the major agrarian crises of the late eighteenth and the early nineteenth centuries.

Henry Sumner Maine described India as a "village society." In the Mughal Empire, complete sedenterization was impossible. As local populations grew, new lands were cleared, villages settled by local Mughal settlement officers, and land offered with tax breaks for expanding cultivation. The process was certainly not seamless. In the 1690s, Panna Miyan, Mathura's Rajput superintendent built Pannapur (outside Mathura Junction Railway Station) and settled the village with a mosque and a well. In the early 1700s, the Rajputs sent a recommendation (*sifarish*) to the imperial court for granting the village revenue (*inʿam*) to Panna Miyan in lieu of his services.[689] Upon Panna Miyan's death, the land revenue would once again accrue to the Mughal State unless the grant had been prolonged for the benefit of his descendants. In Timurid fiscal logic, land clearing ensured some form of meager subsistence to the peasants and in turn increased state revenues over the medium to the long run. All these incentives evaporated in the long and protracted, and often, chaotic agrarian settlements in colonial northern India. By attempting to create a landed gentry of freeholding under the English feudal principle of mutual *seisin*, the EIC made the *zamindar*s powerful landed magnates they could not be earlier as they were evicted or

[688] "Rajasthani petition," Doc. no. 118, *Rajasthani arajadashta*, Bundle no. 3, Rajasthan State Archives, Bikaner.

[689] "Internal copy for chancery archiving of the *ʿarzdasht* sent by Jai Singh II to the imperial court, undated," Doc. no. 152, *Miscellaneous Persian Papers concerning the Maharaja Sahib, undated* (*mutapharrika parasiyana pepara mumalikai Maharaja Sahaba bila tarikha*), Bundle no. 1, Rajasthan State Archives, Bikaner.

disciplined by Mughal military officers. The consequence of these tectonic shifts in agrarian relations was unprecedented levels of rural sedenterization that was unlikely in the Mughal period. Maine's "village society" was a colonial product; it was not a transhistorical phenomenon of Indian society that he made it out to be. The irony of history is such that Gandhi, in a reverse romanticization of this colonial idea, made the "village society" a *cause célebre* for independent India's future.

The Past as a Trace: Between Lived Experience and Historical Amnesia

Al-fatawa al-ʿalamkiriyya, the imperial canonization, was already widely read in the larger Islamic world in places like Samarqand, Istanbul, Mecca, and Madina when Aurangzeb ʿAlamgir was still alive. Scholars outside the subcontinent aptly designated the work, the "Indian Institutions" (*Al-fatawa al-hindiyya*), indicating its regional provenance. In the early eighteenth century, the most commonly circulating Indian text was not a work of Sanskrit or Persian, it was one in Arabic. The most well-known Mughal work was not an imperial chronicle like *Akbarnama*, but the lengthiest of all Hanafi *fatawa*. This was a gift from India to the rest of the Islamic world where it would be consulted, read, and explained over the course of the next few centuries.

Most Mughal subjects could not read Hanafi legal doctrine. That does not take away anything from the fact that Hanafi law was as much theirs since that law had been filled with meaning as much as purpose. In the language of the law of their masters, they staked their rightful claims and secured their livelihood. Timurid public power's relation to its subjects had been a play of obligations for the State and its subjects—fiduciary liability (*daman*), individual responsibility (*dhimma*), trust (*amana*), and intent (*niyya*). Even today, South Asians have not forgotten them in

vernacular inflections they acquire as children: *jamin*, *zimmedari*, *amanat*, and *niyat*. The *ʿulama*'s highly technical legal doctrine has been ordinarily known for centuries even by the illiterate multitude through their lived historical experience. The gulf between their historical memory and the historical amnesia of Islamic law in modern history writing could not be more striking.

Opening these questions, we have demonstrated the persistence of Islamic legal ideas well into the present. While historical memory has been prioritized, our interest has been in recovering Mughal voices that speak of this historical amnesia—the unspoken, the unsaid realities of lawfulness that carried profound significance in their lives. The imprint that Islamic rational (*maʿqulat*) and transmitted (*manqulat*) sciences would leave on the subcontinent's past is something historians are yet to come to terms with. The contrast could not be telling that, say, ancient and medieval Brahminical juridical works, Manu's *Manavadharmasastra* or Vijnanesvara's *Mitaksara* have been studied, but Shaikh Nizam and his colleagues' imperial canonization that elaborates on the very legal backbone on which the largest precolonial empire had stood has never received its due recognition in modern scholarship. This skewed asymmetry that remains true to this day is not only perplexing but requires its own historical deconstruction. Unlike Brahminical Sanskrit works, learned Islamic legal texts in Arabic are prominently absent in modern renderings of Indian intellectual history. These absences speak volumes about how the subcontinent's past has been selectively imagined and about the poverty of that "insufficiently imagined" community called India.[690] Hinduism occupies premier place in the memorialization of the past and Islam is always relegated to a secondary place if it is recognized at all.

[690] I am borrowing the phrase, "insufficiently imagined" from the novelist, Salman Rushdie who used it to describe Pakistan.

In the thoughtful words of Michel de Certeau, history writing is possible "through the intermediary of documents that the historian has been able to see on the sands from which a presence has since been washed away, and through a murmur that lets us hear—but from afar—the unknown immensity that seduces and menaces our knowledge."[691] That murmur, which menaces our received wisdom of Aurangzeb ʿAlamgir's reign is the "unknown immensity" called Hanafi law. What Hanafi law left in its wake on the sands of the subcontinent and imprinted in the minds of those who had once lived there can be found in vernacular language acquisition to law even today—this, despite the ensuing historical transformations of colonialism and postcolonial nation-building efforts. That is because the Indo-Islamic past is after all *not* an historical narrative; it is the lived historical experience of the subcontinent's inhabitants from the past, many of whose resonances survive in our postcolonial present.

[691] Michel de Certeau, *The Writing of History*, trans. Tom Conley (New York: Columbia University Press, 1992), 3.

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