Uncolonised Islam – the textual field of *shariʿa* within and beyond the colonial legal system in India

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[Note on transliteration:

For purposes of this draft, I am omitting diacritics of all kinds except that for the *ʿain*. Where common words exist in Arabic and Urdu, I am transliterating them according to the Urdu, hence South Asian pronunciation pattern, thus: *qazi*, not *qadi*.]

GLOSSARY

faqih(pl.*fuqaha*)	Islamic jurists
fatwa (pl. *fatawa*)	Legal responsa or jurists' opinions
fiqh	Islamic jurisprudence
imambara	Shiʿa religious structure
madrasa	Islamic seminary
mazhab	School or tradition of Islamic law
mujtahid	An interpreter of law
mutawalli	Custodian of an Islamic religious structure, usually one endowed with property
tafsir	Quranic exegesis
taqlid	Conformity (an Islamic concept)
ʿulama	Islamic scholars

Introduction

Islamic law, alternatively referred to as *shariʿa*, is one of the most important systems of non-western law in the world. However, despite the long-standing interest of western scholars in the subject, and to some extent because of the legacy of colonial-era misinterpretations, Islamic law remains poorly understood, and associated with a number of negative traits, such as rigidity, archaism and social inequity. A welcome wave of scholarship produced since the 1990s, exemplified by work of Wael Hallaq, has achieved a great deal in correcting these misconceptions, and revealing the vast and rich world of jurisprudence, textual production,

scholarly training, judicial procedures and documentation that has kept Islamic law living and developing along multiple routes in several countries around the world.[1]

Hallaq's work has also done much to displace the entirely inaccurate vision of Islamic law as a fixed legal code. Instead, we now know that Islamic law is based on a hierarchically organised body of sources – the Quran, the reported traditions of the Prophet (*hadith*), elaborate doctrines on specific legal matters formulated by eminent legal scholars and further exegeses on these doctrines. This entire body of scholarship is known as *fiqh*, which historically became organised into multiple traditions or 'schools', known as *mazhabs*. Scholars who train in Islamic law in seminaries known as *madrasas* become qualified, as *muftis*, to respond to questions of law related to specific matters. In offering their opinions or *fatwas*, *muftis* are free to choose from the entire body of past scholarship, but generally do so from within their *mazhabs*. [2] In a traditional Islamic legal system, no *fatwa* is binding on the judge (*qazi*), who may seek other opinions before coming to a decision. Judicial decisions do not form legal precedents; with every legal question, the entire body of jurisprudence or *fiqh* is examined afresh.

Fiqh is therefore an enormous and highly developed field of non-Western knowledge, which, moreover, has been deeply affected by the history of European colonialism. Until recently, most scholars would argue that, whether in Dutch-ruled Indonesia, British-ruled India, Russian-ruled Central Asia or French-ruled North Africa, *fiqh* underwent a tremendous and largely destructive transformation under colonialism.[3] For example, while it is true that in India English laws were not imposed wholesale, and some parts of Islamic and Hindu laws were preserved, the jurisdiction of these laws was limited only to matters of personal status, such as marriage, inheritance and guardianship. In terms of its substantive content, the acceptable sources of Islamic law (or Anglo-Muhammadan law, as it came to be called) were limited to a small number of digests in the English language. The way these could be interpreted was further limited by making judicial precedents binding, as in English law. As traditional Islamic jurists were displaced from the institutions of justice, lawyers and judges trained exclusively in British legal methods came to apply what remained of Islamic law.

[1] Wael Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), and several other works.

[2] Guy Barak, *The Second Formation of Islamic Law: The Hanafi School in the Early Modern Ottoman Empire* (Cambridge: Cambridge University Press, 2015), pp. 1-20.

[3] For examples, see: David Powers, "Orientalism, Colonialism and Legal History: The Attack on Muslim Family Endowments in Algeria and India," *Comparative Studies in Society and History* 31 (1989), 535-71; Paolo Sartori and Danielle Ross (eds) *Sharīʿa in the Russian Empire: the Reach and Limits of Islamic Law in Central Eurasia, 1550-1917* (Edinburgh: Edinburgh University Press, 2020).

Such modern legal professionals subscribed to the view that Islamic law was a finite set of rules, that could be found in the reports of cases previously decided in colonial Indian courts, or in the small number of English language books, mentioned above. Many such judges and lawyers were not Muslims themselves, and even when they were, their education and training in the British system left little scope for their taking any other view.[4] The overall result of this process, argued Wael Hallaq, was "jural colonization" such that Islamic law in colonial India was uprooted from its "interpretive-juristic soil."[5]

Since the 1990s, an associated but distinct line of scholarship has pointed out that despite such displacement from formal judicial institutions, the intellectual resilience and socio-political relevance of the jurists (*ʿulama*) persisted and even grew. The *ʿulama* adapted to conditions of modernity by embracing new institutional forms of training and self-reproduction – represented by the community-funded and bureaucratically organized new *madrasa* of Dar al-ʿulum Deoband,[6] established in 1867 in a small town in northern India, whose affiliates are now spread all over the subcontinent. The *ʿulama* also responded to popular dissatisfaction, among many Indian Muslims, with law at it was administered by the colonial judiciary. They used the modern technologies of print and post in order to offer guidance on thousands of personal dilemmas and disputes through the classical form of the juristic response (*fatwa*) to questions related to specific situations or dilemmas.[7]

Studies of such adaptive and creative *ʿulama*, their institutions and their publications, however, reinforce the impression that under British rule, the field of knowledge represented by *fiqh* in its classical form, had been abandoned. This may appear convincing, for the following three reasons: firstly, while many South Asian Muslims continued to solicit *fatwas* (and do so until the present day), they did so mainly in connection with matters of personal piety or behaviour, such as prayer, ceremonial, dress and family matters. People who ask such questions have little interest in the fine points of doctrinal debates among the ancients and the *ʻulama* who respond to them attempt to simplify matters by leaving out the citations. Secondly, while widespread debates over marriage and divorce laws, or indeed, about the

[4]S.A. Kugle, "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia", *Modern Asian Studies*, 35: 2 (2001), 257-313; M. Anderson, "Islamic Law and the Colonial Encounter" in P. Robb and D. Arnold (eds), *Institutions and Ideologies: a SOAS South Asia Reader*,Richmond: Curzon, 1993, pp. 165-85; G. Kozlowski, *Muslim Endowments and Society in British India*, Cambridge: Cambridge University Press, 1985; Hallaq, *Shariʻa*, pp. 371-383.

[5]Hallaq, *Shariʻa*, p. 376.

[6]Barbara Metcalf, *Islamic Revival in British India: Deoband, 1860-1900* (Princeton: Princeton University Press, 1982).

[7]Muhamad Khalid Masud, Brinkley Messick and David Powers (eds) *Islamic Legal Interpretation: Muftis and their Fatwas* (Harvard, 1996), especially chapters by B. Metcalf "Two Fatwas on Haj in British India," and Khalid Masud, "Apostasy and Judicial Separation in British India."

legitimacy of British rule, might occasionally draw learned and influential *ʿulama* and their *fatwas* on the subject into the public sphere, such debates were dominated by the "new leaders" of the Muslim community who had neither training nor interest in the intricacies of *fiqh*. Such new leaders, for example Sayyid Ahmad Khan, denounced *taqlid* – the tendency to adhere strictly to the doctrinal interpretations of jurists of the past – and instead called for *mujtahids* (legal interpreters) in every generation. This tendency extended right across the political spectrum; Islamic modernists and "Islamists"[8] alike depended instead on their own ability to interpret the basic sources of Islamic faith, which they limited to the text of the Holy Quran and the reports of the Prophet's words and actions (*hadith*).[9] Print technology dislodged the personal interpretive authority of the *ʿulama*, and allowed any Muslim individual to make sense of these key texts according to his or her own untutored lights.[10] Finally, even the more traditionally trained *'ulama* turned away from studies of *fiqh* towards scholarship on *tafsir* and *hadith*, developing a tendency that had been rising since Shah Waliullah Dehlwi's times, that is, from the eighteenth century.[11]

Despite these developments, this article will propose that classical *fiqh* remained an active field of knowledge in colonial India, and that such survival was possible by adroit negotiation of the colonial judicial system itself. I will draw attention to an Indian Muslim lawyer, writer and judge called Sayyid Amir Ali (1849-1928), to show how he made significant, and to some extent, successful efforts to re-engage the colonial legal system with the classical heritage of *fiqh*, both in terms of the sources of law, and in terms of the methods

[8]While I find the term "Islamist" problematic, I am using it here in the sense that Muhammad Qasim Zaman and Roxanne L. Euben use it in Muhammad Qasim Zaman and Roxanne L. Euben (eds) *Princeton Readings in Islamist Thought: Texts and Contexts from Al-Banna to Bin Laden* (Princeton: Princeton University Press, 2009), p. 4.

[9]Francis Robinson, "Islamic Reform and Modernities in South Asia," *Modern Asian Studies* (42: 2/3), 259-281 especially at 262-269, although he does not discuss any particular texts in detail; Christian Troll, *Saiyid Ahmad Khan: A Reinterpretation of Muslim Theology* (Delhi: Vikas, 1978) is much more detailed. For direct evaluation, see the way in which Saiyid Ahmad Khan argues his point in S.A. Khan, *Ibtal-i Ghulami* [Abolition of Slavery] (1871), republished Agra: Mutba' Mufid-i 'Am, 1893 and S.A. Khan, 'Auraton ke Huquq' [Women's rights] (1871)republished in *Maqalat-i Sir Saiyid* [*Writings of Sir Saiyid*] (Lahore: Majlis Taraqqi-yi Adab, 1962-5), vol. V, pp. 194-99; none of these articles, which discuss "law" and "Islamic law", make any reference to *fiqh* literature.

[10] A point made forcefully in Francis Robinson, "Technology and Religious Change: Islam and the Impact of Print," *Modern Asian Studies*, 27: 1 (1993), 229-251, in which he refers to the modernist Sayyid Ahmad Khan and the Islamist Sayyid Abul 'Ala Maududi; there are further and more detailed examples in Muhammad Qasim Zaman and Roxanne L. Euben (eds) *Princeton Readings in Islamist Thought*; Muhammad Qasim Zaman, *Modern Islamic Thought in a Radical Age: Religious Authority and Internal Criticism* (Cambridge: Cambridge University Press, 2012).

[11] Francis Robinson, *The 'Ulama of Farangi Mahall and Islamic Culture in South Asia* (London: Hurst, 2001), 15, 28, 36-7.

of interpretation.[12] I propose that such efforts were made possible through the very modern activity of publication-oriented research, undertaken by two very different sets of people. The first were European Orientalists, especially those that counted as experts of Islam and Islamicate societies. And on the other were members of the non-state *ʿulama* who used print to disseminate a wider range of materials than has been hitherto noticed, particularly: *fiqh* texts, and commentaries on them. In order to understand these activities, however, we need to step back and take stock of the historical and institutional context in India under British colonial rule.

The beginnings of Anglo-Muhammadan law, or Islamic law in the British empire

In 1600, a joint stock trading company English East India Company (henceforth, EIC) was formed and chartered in London. From the beginning of the seventeenth century, India was a major trade destination for the EIC. Its officials and nominees constantly negotiated with the Mughal dynasty and other regional rulers for trade privileges; the results were patchy. The Mughals allowed the EIC to set up warehouses (called factories), to acquire land under *zamindari* (landlord and tax-collector) titles, and granted occasional reduction in taxes, but never went so far as to offer a blanket exemption from taxes, or any kind of exclusive trade deal.[13]

Things changed when the Mughals declined in power. Regional kingdoms offering only formal allegiance to the Mughals arose; and the EIC started participating in the internal politics of these regional kingdoms. The most outstanding of such EIC intrigues was in the eastern kingdom of Bengal, which was formed out of a former Mughal province (*suba*) of the same name around the 1710s, and ruled by one Shiʿa dynasty, and then another.[14] Following a series of conflicts focused upon trade and taxation rights as well as claims of sovereignty, the EIC was officially appointed *diwan* or treasurer of three Indian provinces by a politically and militarily cornered Mughal emperor in 1765. As an extension of that revenue

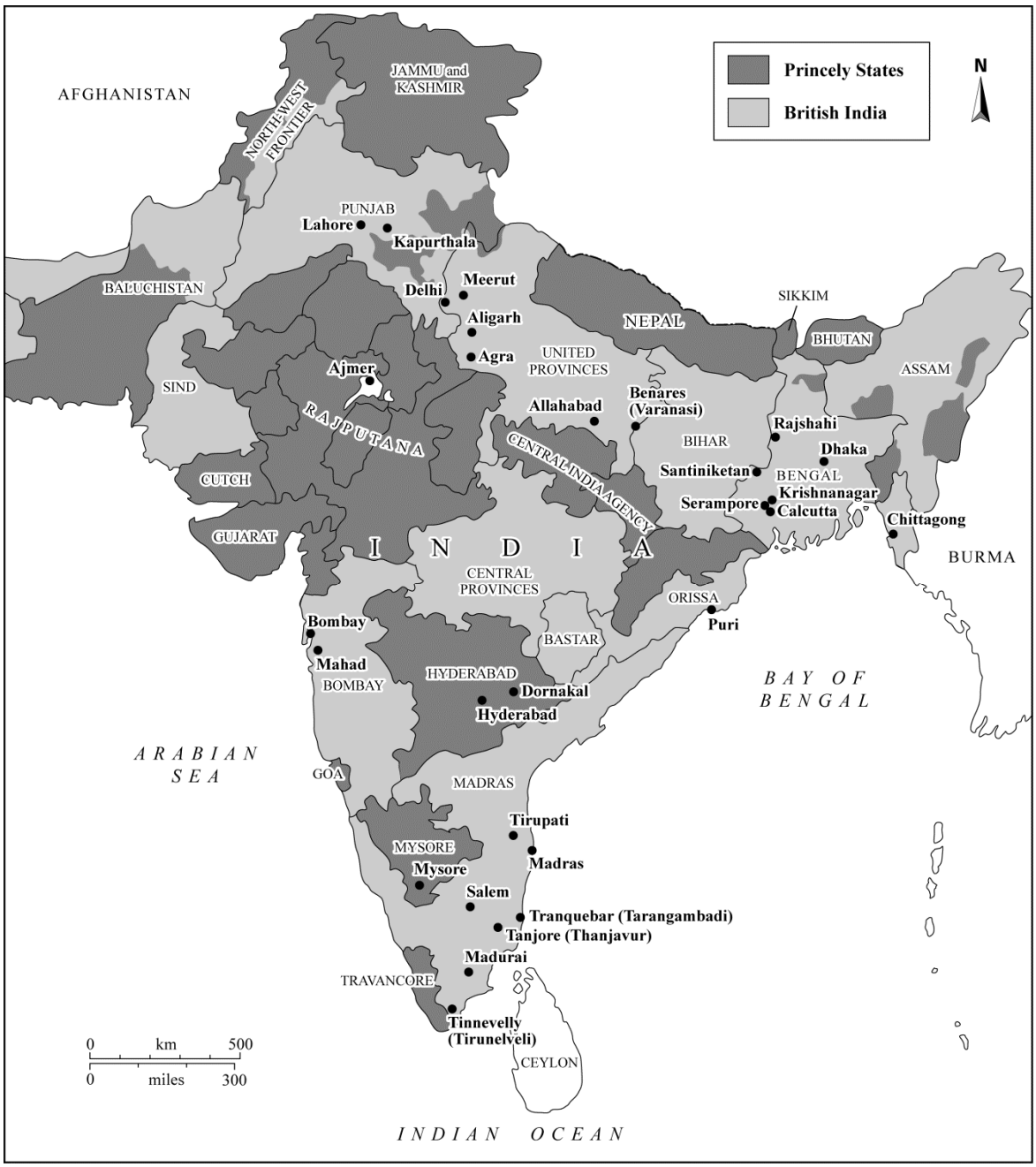
[12] For an introduction to Amir Ali, see Nandini Chatterjee, Law, Culture and History: Amir Ali's interpretation of Islamic tradition," in Shaunnaugh Dorsett and John McLaren (eds) *Legal Histories of the British Empire: Laws, Engagements and Legacies* (Curzon: Routledge, 2014), pp. 45-59.

[13]On the history of the East India Company see K.N. Chaudhuri, *The Trading World of Asia and the East India Company* (Cambridge: Cambridge University Press, 2006) ; for some instances of the EIC's dealings with the Mughals see Sanjay Subrahmaniam, "Frank Submissions: The Company and the Mughals between Sir Thomas Roe and Sir William Norris," in H.V. Bowen, Margarette Lincoln and Nigel Rigby (eds) *The Worlds of the East India Company* (Woodbridge: Boydell, 2002); Farhat Hasan, "Indigenous Cooperation and the Birth of a Colonial City: Calcutta, c. 1698–1750," *Modern Asian Studies*, 26: 1 (1992), 65-82.

[14]Peter Marshall, *Bengal: the British Bridgehead. Eastern India, 1740-1828* (Cambridge: Cambridge University Press, 1988); *Bengal Nawabs* [A translation of three Persian historical texts] (translated) Jadunath Sarkar (Calcutta: Asiatic Society, 1952)

appointment, the East India Company also acquired jurisdiction over civil justice, and without much formal justification, appropriated control over criminal justice within a few years.[15]

These events had a transformative effect on *fiqh* and its place in the judicial systems of India. In order to understand that process, it will be useful to take a look at the map and charts below.



[15]N. Majumdar, *Justice and Police in Bengal, 1765-1793: A Study of the Nizamat in Decline* (Calcutta: K.L. Mukhopadhyay, 1960); Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (1st published 1998; Delhi: Oxford University Press, 2000).

Map 1. British-ruled India, and princely states, 1857-1947

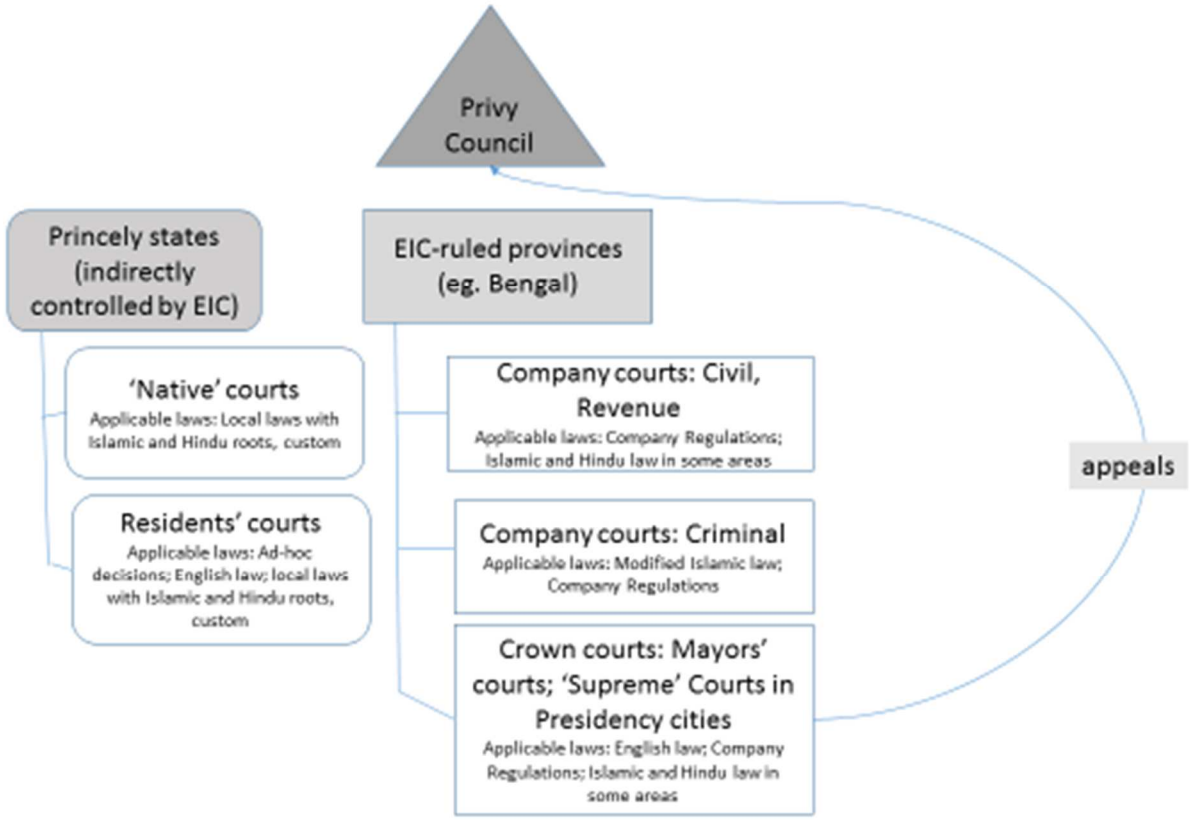


Fig. 1 Legal jurisdictions until c. 1860 CE

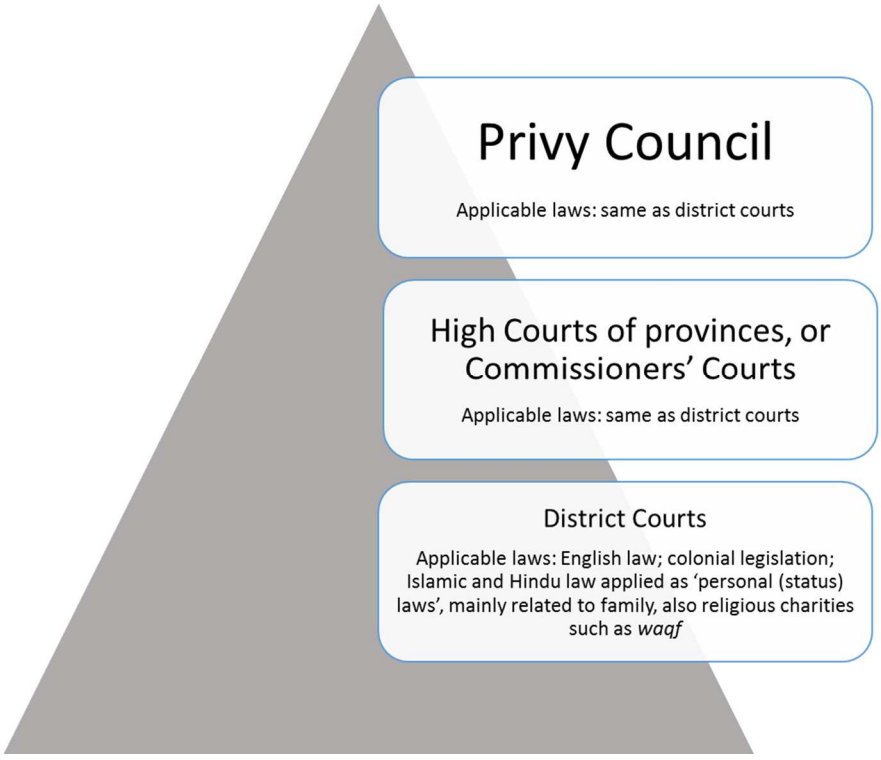


Fig. 2 Legal jurisdictions after c. 1860 CE

It is important to remind ourselves here that, unlike in other British colonies or protectorates, such as Malaya or Egypt, there was never a separate set of Islamic law courts in colonial India. Islamic law was applied, according to defined jurisdictions, within the same judicial system, by the same judges. The areas where Islamic (and Hindu) laws applied were defined by a series of British-made laws – these included Company Regulations, Letters Patent setting up the Crown courts, and eventually (British Parliamentary) Statutes.

The institutional story of Islamic law in British-ruled India falls into two principal phases, to which we shall turn now. The first begins around 1772, when the first hierarchy of Company and Crown Courts was created [See Figure 1]. For the first twenty years or so of their existence, these courts, which were presided over by British judges, depended exclusively on Indian legal experts, Muslim *maulvis* and Hindu *pundits*, to state the relevant law for cases where Islamic and Hindu law applied. In theory, Islamic law applied to all crimes, and to many matters relating to family and religious endowments (*waqf*) but also sale and contracts. It is worth noting here, that while we have some knowledge about the training and background of some of the earliest Hindu *pundits* who worked for the colonial judiciary,[16] there has been no study so far into the education and careers of the *maulvis*, the Muslim law officers. We can speculate that some of them were educated by the new British-created Calcutta *madrasa*, established and endowed by Hastings in 1781,[17] but this is an area that requires further research.

It is not easy to establish what kind of *fiqh* was applied in these new colonial courts of the late eighteenth and early nineteenth century by these *maulvis* or Muslim law officers, but we can piece together the following outline from a number of sources. The first category of such sources consist of direct translations, to English, of key *fiqh* texts. After about twenty years of seeking the advice of the Hindu and Muslim law officers on individual cases, British Orientalists began their efforts to access the sources of Islamic law directly through translations. The earliest such texts translated were jurisprudence (*fiqh*) texts that were clearly highly regarded by the Indian Muslim jurists, such as twelfth-century Central Asian text, *Al-Hidaya* of Al-Marghinani. It was first translated to Persian by a team of *ʿulama* and from that version to English by Charles Hamilton in 1791. This was followed by translations of more

[16]Ludo Rocher, "The Career of RādhākāntaTarkavāgīśa, an Eighteenth-Century Pandit in British employ," *Journal of the American Oriental Society*, 109: 4 (Oct-Dec. 1989), 627-33.

[17]There is no scholarly study of the unique British-instituted Calcutta *madrasa*. For some documents related to its history, see, Martin Moir and Lynn Zastoupil (eds) *The Great Indian Education Debate: Documents Related to the Orientalist-Anglicist Controversy, 1781-1843* (Richmond: Curzon, 1999).

Central Asian texts - the *Al-Sirajiyyah* on inheritance, and its commentary *Al-Sharafiyah*, by the Orientalist and Supreme Court judge William Jones in 1792.

The second category of sources for reconstructing the field of *fiqh* during transition to colonialism in India were composite works, partially authored by British scholars, while referring to a range of *fiqh* texts. An incomplete work, mainly on commercial transactions, titled *A Digest of Mohummudan Law According to the Tenets of the Twelve Imams* was produced by a certain Captain John Baillie, a Scottish Orientalist and East India Company employee, in 1805. This was based on several Shiʿa *fiqh*works, including Al-Hilli's fourteenth-century *Tahrir al-Ahkam*. A composite manuscript, containing parts of relevant *fiqh* texts had beencompiled under the supervision of William Jones for this purpose.[18] By the mid-nineteenth century, other Company officials, such as the lawyer-Orientalist William Morley, produced long bibliographies of the many *fiqh and fatwa* texts in use in and around Calcutta, together with an able survey of the history, sources and relevant texts of Islamic law in general.[19] Around the same time, Neil Baillie produced a work on sale and inheritance, for which he used the Arabic printed edition of the seventeenth-century Indian text *Fatawa-yiʿAlamgiri* (published in Calcutta in 1828), the Hamilton's translation of *Al-Hidaya* combined with the published Arabic text, and also its published commentaries; the *Inaya and Kifaya*.[20] There was also a remarkable man, a Persian-educated Hindu Brahmin called Shama Charan Sircar, who taught at the Calcutta Madrasa and also studied Arabic and Islamic law during his time there. Eventually, he came to work as interpreter in the Company and Supreme Courts,[21] and based on this experience, he wrote a highly respected book on Islamic law, including references to both Sunni and Shiʿa *fiqh* books commonly in use in India.[22] Thus, while the judicial system was being institutionally colonised, *fiqh, as* a trans-regional and lively field of non-Western knowledge was very much in evidence, albeit through its cannibalisation by colonial officials and experts.

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[18] John Baillie, *A Digest of Mohummudan Law, according to the Tenets of the Twelve Imams* (Calcutta: Company's Press, 1805); Morley noted that the composite manuscript that this book was based on was still available, but he did not say where. W.H. Morley, *An Analytical Digest of all the Reported Cases Decided in the Supreme Courts of Judicature in India* (London: Allen & Co., 1849), vol. I, cclxxix.

[19]J.H. Harrington, *An Analysis of the Law and Regulations Enacted by the Governor General in Council at Fort William in Bengal* (London: A.J. Valpy, 1821), pp. 228-41; W.H. Morley, *An Analytical Digest of all the Reported Cases Decided in the Supreme Courts of Judicature in India*, London: Allen & Co., 1849, vol. I, pp. ii-v.

[20]Neil Baillie, *The Moohummudan Law of Sale* (London: Smith & Elder, 1850), pp. xlvii-xix.

[21]Anon., *Life of BabuShama Churn SirkarVidya-Bhushan* (No publication details, 1879), British Library.

[22]S.C. Sircar, *The Muhammadan Law: A Digest of the Law Applicable Especially to the Sunnis of India*, (Calcutta: Thacker, Spink & Co., 1873), pp. 1-22; S.C. Sircar, *The Muhammadan Law: being a Digest of the Sunni Code in Part and of the Imamiyah Code* (Calcutta: Thacker, Spink & Co., 1875), pp. 165-75.

Ironically, colonialism may have led to the widening of the field of knowledge covered by Indian dispensations of *fiqh*. By the mid- nineteenth century, the fruits of broader Orientalist study on the Islamic world beyond India was began informing the accounts of British scholars of Islamic law in India – Morley's description of the sources of Islamic law and the typology of relevant texts depended heavily on a seventeenth-century Ottoman text, the *Kashf al-zunun,*[23] which had just been published by the Oriental Translation Fund, which was a British association of Orientalists with active Continental European members. Morley mentioned other Ottoman *fiqh* texts, such as Ibrahim Halabi's sixteenth-century *Multaqa al-Abhur* as well as several *fatawa*collections from the Ottoman empire, noting that these had been published in Constantinople/Istanbul, and that while these texts were not in use in India, they might been be acceptable citations, given that both regions were Hanafi in persuasion.[24] Finally, Morley also mentioned the *Tableau Général de l'Empire Othoman*, produced by that curious eighteenth-century Ottoman-Armenian-Swedish-French Orientalist Ignatius Mouradgead'Ohsson in the 1780s, while noting that its legal sections were incorrectly arranged, and even inaccurate in places.[25]

The third type of source, that gives us some hints about the range of *fiqh* texts in use in India the end of the eighteenth century and the beginning of the nineteenth, is exemplified by the work of the British Orientalist and judicial official, William Hay Macnaghten. Macnaghten was judge in the Company courts and as a by-product of his work, he collected the *fatwa*s given by the *muftis* in the Company's courts. Of course, he treated them through a prism of English law, treating the *fatwa*s like common law precedents, generating from them a logically arranged set of 'principles' or doctrines of Islamic law – limited, of course mainly to family, inheritance and personal status matters, which were the only matters for which Islamic law remained relevant in the British Indian legal system. Macnaghten's *Principles and Precedents of Moohumuddan Law* (1829), ran into several annotated editions, and became something of a classic of "Muhammadan law" in colonial India; for us, the "Precedents" section offers the clearest glimpse that we can get of the process of writings *fatwa*s within the colonial legal system.[26]

Finally, and in addition to these three categories of sources, where particular sets of cases impinged upon pressing policy imperatives, *ad-hoc* collection and distillation of Islamic

[23]Katip Celebi, *Kashf al-zunun 'anasami al-kutuvwa al-funun,* (ed.) Gustav Fluegel (London: Oriental Translation Fund, 1838- 58).
[24]Morley, *An Analytical Digest,* pp. cclxxii-iii; ccxci-ii.
[25]*Ibid.*, p. ccxcv.
[26]Macnaghten, *Principles and PrecedentsofMoohummudan Law* (Calcutta, 1825)

and Hindu law was made, such as the need to create adequate deterrence against homicide,[27] to prevent the burning of Hindu widows,[28] or to regulate slavery.[29] All this produced sets of rules which were supposed to be the Muslim and Hindu laws on the subject, and which then could be accommodated, modified, or rescinded, depending on the political climate. For us, however, these collections offer opportunities for tracing the kinds of *fiqh* texts that legal scholars cited when forming their recommendations.

Let us pause here to remind ourselves that the ***outcome*** of this process a reduction of Islamic law (designated Muhammadan law) to a small number of English language manuals, and a growing body of colonial precedents, all restricted to the family law of Muslims and to religious endowments, or *waqf*. However, being aware of the vast range of *fiqh* texts that remained in circulation, both in manuscripts and print form, and which continued to be cited well into the mid nineteenth century, allows us to understand that world of Islamic juristic knowledge from which the central protagonist of this paper - Amir Ali - would eventually draw his resources.

The Appendix at the end of this paper offers an incomplete list of the Islamic legal scholarship described above, along with information that I have been able to collect regarding authorship, date, provenance, and most importantly for this paper – publication history. The list includes *fiqh* texts, especially *furuʿ*, or commentaries and super-commentaries on doctrinal points, but also collections of *fatwas*, which were responses to specific legal problems. It also includes collections of Prophetic traditions of *hadith*, because these were considered important sources of law, and fresh collections of *hadith* or access to such allowed the expansion of legal bases. All these kinds of texts together constituted the field of knowledge that was *fiqh*. Within this list, we can identify certain patterns specific to early nineteenth-century South Asia, such as the preference for super-commentaries (i.e. more recent texts rather than more ancient ones, showing evolution of ideas), penchant for Central Asian commentaries in particular, showing both the dominance of the Hanafi school in northern India, and the continuities between Central and South Asia even after the decline of the Mughal dynasty, who had been of Central Asian origin. It also shows the continuing and active production of jurisprudence texts by Indian scholars, including, but not limited to the

[27] J. Fisch, *Cheap Lives and Dear Limbs: the British Transformation of the Bengal Criminal Law 1769-1817*, Wiesbaden: Steiner, 1987; R. Singha, *A Despotism of Law: Crime and Justice in Early Colonial India*, Calcutta: Oxford University Press, 1998.
[28] L. Mani, *Contentious Traditions: the Debate on Sati in Colonial India*, Berkeley: University of California Press, 1998.
[29] G. Prakash, *Bonded Histories: Genealogies of Labour Servitude in Colonial India*, Cambridge: Cambridge University Press, 1990, pp. 140-83.

Shiʿa centre Lucknow, and high regard for such recent Indian scholarship in other parts of the subcontinent, including colonial Calcutta.

Printing played a crucial part in the circulation and citation of these texts in the nineteenth century. Most of the texts mentioned above were published in Arabic in Calcutta in the early nineteenth century, some were published in Persian, and small parts of texts considered crucial by the East India Company's courts were translated to English. These last include the *Hidaya*, and *Al-Sirajiyya*, but also portions of the *Fatawa Alamgiriyya*and the *Durr al-Mukhtar*. Occasionally, portions of Arabic text were also included within English-language works, to establish "authenticity." Macnaghten, for example quoted copiously in Arabic from the *Fatawa Hamadiyya*[30] as well as the *Sharh-i Wiqaya*;[31] the *muftis* whose *fatawa* he had compiled referred a great deal to *Al-Hidaya*,[32] *Kanz al-Daqaiq*;[33] *Fusul Imadiya*;[34] *Sharh-I Wiqaya* (possibly the Persian text);[35] and the rather obscure *Fatawa-yi Naqshbandi* (Persian text?).[36] These were mostly *fiqh* texts, with one or two important *fatawa* collections; *Fatawa Alamgiriyya* was itself a misnomer, this, too, was a *fiqh* text.

The books listed here reveal Indian *'ulama's* continued immersion in an international world of Islamic juristic knowledge well into the nineteenth century. Within this world of Islamic legal expertise, scholars commented and re-commented on texts that criss-crossed the vast territories between from India, Central Asia, Iraq/Iran and Egypt. Large numbers of *hadith* collections, *fiqh* texts and *fatwa* collections (especially from Central Asia and India) were in circulation and use in in nineteenth-century colonial India. Many of these were printed for the first time in the early nineteenth century rendering them available to Islamic jurists, including those who chose to render their services to the colonial state.

An Islamic lawyer in a mature colonial system

In 1862, a new, rational single hierarchy of courts was established in India, removing the difference between Company and Crown jurisdictions (see figure 2). Islamic law still applied, but only in matters of personal status and *waqf*. In 1860 the Indian Penal Code had officially and completely replaced Islamic criminal law; in 1872 the Indian Evidence Act and Indian

[30]Macnaghten, *Principles and Precedents*, pp. xliv-lviii; lxiv; lxxi;
[31] For example, on *Ibid.*, pp. lviii;
[32] For example, on *Ibid.*, pp. 172-3; 189; 192; 202
[33] For example, on *Ibid.*pp. 169 (on sale);
[34] For example, on *Ibid.* pp. 170;
[35] For example, on *Ibid.*, pp. 172; 186; 202
[36] For example, on *Ibid.*, pp. 190.

Contract Act, as well a stream of procedural laws would perhaps restrict its scope. Muslim and Hindu law experts were removed altogether from the system by Act No. XI of 1864.[37]

Even prior to this institutional change, by the 1850s, students for the Bachelor of Law degree from Calcutta University, no longer needed to study any *fiqh* text – in original or in translation. Instead, the curriculum prescribed Machnaghten's *Principles and Precedents*. Soon afterwards, in fact, and even easier books were produced for British law Students, such as the one produced in 1869 by Standish Grady (1869), styled Reader in Hindu, Muhammadan and Indian laws to the Inns of Court.[38] This book omitted the 'precedents' of Machaghten'sbook, and turned Islamic law into a list of tedious rules for British students studying Indian law in Britain to memorise - or ignore.

It is in this context that I use the career and writings of a colonial lawyer and judge, Sayyid Amir Ali, to track the extent to which the Islamic legal knowledge and networks described in the previous section remained alive and accessible. Amir Ali was one of the most prominent Indian legal professionals of the late nineteenth and early twentieth centuries; in 1909, he became the first Indian and first Muslim judge to be elevated to the Judicial Committee of the Privy Council, the final court of appeal of the British Empire. He was also a prolific and highly respected writer, whose legal textbooks came to be prescribed for law students in India, and to serve as sources for several colonial legal decisions. The research that is presented below has been labour intensive. It necessitated tracking the judgments of Amir Ali through hitherto undigitised colonial law reports, identifying texts through the obscure and cryptic references in those judgments and then analysing the significance of particular references in the context of particular decisions. Amir Ali's use of Islamic legal texts therefore serves as a case study in support of the argument that Islamic legal knowledge thrived and was reinvigorated by the linked processes of Oriental scholarship and modern printing; and that it remained accessible to lawyers within the colonial legal system, especially those looking to reform the law applicable to Muslims by thinking outside the box of colonial legality.

In terms of his early life and career, Sayyid Amir Ali was born in 1849 in a town in the eastern part of India in a comfortably off, but not wealthy Shiʿa Muslim family, which

[37] An Act to repeal the law relating to the offices of Hindu and Muhammadan Law Officers and the offices of Kazi-ul-Kuzaat and of Kazi, and to abolish the former offices.
[38] J. Strawson, 'Revisiting Islamic Law: Marginal Notes from Colonial History', *Griffith Law Review*, 12, 2003, 362-83

claimed descent from a Persian soldier who came to India in the early eighteenth century.[39] From his student days in London in the 1870s, he became a prolific amateur historian of Islamic civilisations. Within the legal profession, he came to be recognized as one of the foremost legal scholars of his day; he published a number of books which came to be regarded as authoritative sources of Islamic law within the British Empire, and even much beyond India. Unusually for a judge, he led an active political life. He was a founder member of the All India Muslim League and its London branch, which played a key role in lobbying the British government of India for special constitutional safeguards which would recognise Indian Muslims as a distinct political entity.[40] Despite all this, most historians have seen him as only one of many Anglicised Islamic modernists, a half-hearted one at that, and of relatively little political or intellectual importance.[41]Only one recent work has proposed that he was, in fact, a creative legal scholar, drawing upon the *fiqh* scholarship to expand the range of legal arguments and rights that could be claimed on their basis.[42]

There is nothing to indicate that Amir Ali received traditional training in *fiqh* as part of his formal education, although he was deeply attached to the *mutawalli* (custodian) of the *imambara* to which his school was attached, even helping the senior scholar to translate a book on the philosophy of knowledge.[43] His Bachelor of Law degree from Calcutta University in 1868, would have required him to study a classical language from a range of options, of which he probably studied Persian, and had some Arabic because of religious education at home.[44] Funded by a government scholarship, Amir Ali travelled to England to acquire further qualifications, and enrolled with the Inner Temple, one of the Inns of Court, or professional associations for barristers, in 1869. Here, he became involved in public life, and nudged by liberal British friends towards explaining explain Islam's social values in lectures and publications.

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[39] Amir Ali, 'Memoirs', serialized in *Islamic Culture*, Oct 1931, pp. 513—42; Jan 1932 pp. 1—18; April 1932, pp. 163—82; July 1932, pp. 333—62; October 1932, pp. 503—25; K.K. Aziz, *Ameer Ali: his Life and Work*, Lahore: Publishers United, 1968, pp. 527-647; S.R. Wasti, *Memoirs and Other Writings of Syed Ameer Ali*, Lahore: People's Publishing House, 1968, pp. 5-129.

[40] P. Hardy, *The Muslims of British India* (Cambridge: Cambridge University Press, 1972); M.Y. Abbasi, *The Political Biography of Syed Ameer Ali* (Lahore: Wajidalis, 1989).

[41] M. Forward, *The Failure of Islamic Modernism?: Syed Ameer Ali's Interpretation of Islam*. New York: Peter Lang, 1999; A. Powell, "Islamic Modernism and Women's Status: the Influence of Syed Ameer Ali" in A. Powell and S. Lambert-Hurley (eds) *Rhetoric and Reality: Gender and the Colonial Experience in South Asia*, (New Delhi: Oxford University Press, 2006), pp. 282-317; C. Bayly, *Recovering Liberties: Indian Thought in the Age of Liberalism and Empire* (Cambridge: Cambridge University Press, 2012), 231-43.

[42]Chatterjee, "Law, Culture and History."

[43]Maulvi Saiyid Karmat Ali, *Makhaz-i-Uloom, or a Treatise on the Origin of the Sciences* (translated Ubaid Allah, al-Ubaidi and Amir Ali) (Calcutta: Baptist Mission Press, 1867).

[44]*Calcutta University Calendar*, Calcutta: Thacker, Spink & Co., 1866-7, pp. 35-50.

In his earliest public lectures, Amir Ali was more concerned with establishing Islam's progressive social values than in legal interpretation. For example, in his first lecture, later published in 1873 as *A Critical Examination of the Life and Teachings of Muhammad* (henceforth *Critical Examination*),[45] he spoke generically about ethical imperatives rather than the traditional sources of law recognised by Islamic jurists.[46] When it came to distasteful matters, such as male polygamy and slavery, he took a historicist approach, asserting that such practices were acceptable 'at the time,' and shared across religious traditions. But the Spirit of Islam, he contended, was to move with the times, since '[t]he compatibility of the laws of Mohammed with every stage of progress shows their founder's wisdom. The elasticity of laws is the great test of their beneficence and usefulness, and this merit is eminently possessed by those of Islam.'[47]

Even though this was a typical historicist interpretation shared by other Islamic modernists, Amir Ali already showed himself to be different by reading very extensively from Arabic and Persian language histories,[48] as well as the publications of sympathetic European Orientalists.[49] He also referred to a small number of Islamic jurisprudential texts, which was already more than the usual fare of colonial legal officials: Sunni and Shiʿa *hadith* collections such as *Sahih Bukhari*; Al-Baghawi's *Mishkat al-masabih* and Mullah Muhammad Baqir's *Bihar al-anwar*.[50]It is unclear at this point how much Amir Ali actually read, or could read himself. He could read French; it is unclear whether he read the German works himself or had these translated for him. It is not clear whether he was reading the Arabic language histories in the original, in German translation, or in some other way; the same question arises with relation to his reading of the *hadith* collections. In the absence of direct information, and given his copious quotations from Arabic text in subsequent

[45] A. Ali, *A Critical Examination of the Life and Teachings of Muhammad* (London: Williams and Norgate, 1873), p. 150.
[46] Ibid, p. 160.
[47]Ibid, p. 221.
[48] Of Arabic-language historians, he chose the Iraqi scholar Ibn Hisham (d. 834) who had edited a pre-existing biography of the Prophet, and 'Izz al-Din Ibn al-Athir's *Al-kamil fi al-tarikh* (The perfect/Complete history), written c. 1231. Ibn Hisham's work was first translated to German in 1864 by Gustav Weil – whose earlier *Mohammed der Prophet* (1843) is said to have marked the 'beginning of an entirely new era in Islamic studies in Europe'. B. Lewis, 'Gibbon on Muhammad', *Daedalus*, 105, 1976, 89-101.
[49] Of Orientalists, one of his favourites was Louis AmélleSédillot (1808-1875), author of *Histoires des Arabes: leur empire, leur civilisation, leurs écoles philosophiques, scientifiques et littéraires*(1854) and A.P. Caussin de Perceval, author of *Essai sur l'histoire des Arabes avant I'Islamisme, pendant l'epoque de Mahomet, et jusqu'a la reduction de toutes les trubus sous la loi Musulmane* (1847-48). Unsurprisingly, works of Evangelicals (such as the Scottish Muir brothers) and others whom he considered prejudiced against Islam was treated with suspicion, together with the sources they used.
[50]Ali, *A Critical Examination*, pp. 238-43

publications, we can only speculate that around this time, he arranged to learn Arabic, or learn more than the basics that he may have acquired as a child.

The return of *fiqh* in colonial India

Amir Ali was called to the bar 1872. Returning to India, he enrolled as an advocate at the Calcutta High Court. Thus he became the fourth Indian and first Muslim in the Calcutta Bar. Working his way up through various magistracies, he began establishing himself as an authority on Islamic law. He was appointed Lecturer on 'Mahommedan law' at the Presidency College of the Calcutta University. The lectures he delivered were published in 1880 as *The Personal law of the Mahommedans, according to all the schools, together with a comparative sketch of the law of inheritance among the Sunnis and the Shiahs*(henceforth *Personal Law*).[51] In the preface to this book, he made the preposterous claim that all previous works produced in India, such as by Hamilton, Macnaghten, Baillie, and Sircar had neglected to study the original sources. This was a strategy he developed over his career, that of claiming proximity to the 'original sources', without referring to the works of scholarship that enabled his own knowledge.

Ironically, Amir Ali's works still permit us to reconstruct the world of Islamic *fiqh* in late colonial Bengal, and continue the story of 'Anglo-Muhammdan law' from where we left it at the end of the previous section. So in *Personal Law* Amir Ali continued to cite Arabic-language world historians and sympathetic Western Orientalists, but he also began to write in traditional jurisprudential terms. To start with, he clarified the sources of Islamic law that would be recognised by jurists (Quran, traditions, consensus among scholars and analogical reasoning). Most importantly, he now cited classical works of *hadith* and *fiqh*, pertaining to the four main *Sunni* schools and the *Shiʿas*. These included an international corpus of Arabic and Persian language *fiqh* texts, dating from the twelfth-century *Hidaya* and al-Nasafi's fourteenth-century *Kanz al-Daqaiq* to the nineteenth-century *Hashiya 'ala Radd al-muhtar* (the Egyptian jurist Ibn Abidin's 'super-commentary' on al-Haskafi's seventeenth-century *Durr al-Mukhtar*).[52] He also used a collection of *fatwa*s produced by Iranian jurists in the nineteenth century (*Jamiʿ al-shattat*). Thus Amir Ali refused to accept a limited number of translated English-language texts as the sum total of Islamic law. Instead, he viewed Islamic

[51]Ali, *Personal Law*, pp. v-x.

[52] F. Bustani, 'Ibn Ābidīn', *Encyclopaedia of Islam*, (eds) P. Bearman et al, Brill Online, 2013, http://0-www.brillonline.nl.lib.exeter.ac.uk/entries/encyclopaedia-of-islam-2/ibn-abidin-SIM_3062 accessed 02 October 2013.

law as an international, multi-lingual and multi-sectarian system of jurisprudence, subject to historical evolution.

In order to take this approach, Amir Ali was reliant on the labours of earlier Orientalists. Practically every one of the twenty-four works of *fiqh* that he listed in the preface to *Personal Law* had been read and discussed by his predecessors, especially Harrington, Morley, John Baillie, Neil Baillie and Sircar, although he dismissed their as inadequate. At the same time, Amir Ali did indeed go further than his legal-Orientalist predecessors. One of the ways in which he did so was by referring to Turkish and Persian works previously not commonly used in India. One of his new-found authorities was the Ottoman jurist Ibrahim al-Halabi's (d. 1549) massive legal compilation, the *Multaqa al-ubhur*, using an imperfect French translation titled *Tableau Général de l'EmpireOthoman*, which was produced by an eighteenth-century Ottoman-Armenian-Swedish-French Orientalist Ignatius Mouradgea d'Ohsson. Volume I of this book claimed to be based on the *Multaqa*, but, as anybody who actually read the original Arabic text would know, d'Ohsson had taken many liberties with the text, rendering it a less than accurate translation.[53] Amir Ali did possess a printed two volume copy of the *Majmaʿ al-Anhar*, the commentary on the *Multaqa*,[54] it is unclear whether he really read either than *Multaqa* or its commentary carefully.

In his subsequent Tagore law lecture, published in 1884 as *The Law relating to Gifts, Trusts and Testamentary Dispositions among the Mahomedans* (henceforth Gifts) his commitment to scholarship in *fiqh* had progressed further. *Gifts* began with an excerpt from a French Orientalist's work, denouncing European ignorance that reduced 'Islamic law' to the Quran, without attention to the density and richness of *fiqh*.[55] He also started taking an ecumenical approach between different legal schools, and in *Gifts*, he mentioned the thirteenth-century *Shaʿfi*work, *Minhaj al-talibin*, written by the Syrian scholar Imam Nawawi in the thirteenth century.[56] Most Muslims in India, except in the south-west coastal region, are Hanafis, so this was a big innovation, and one related to colonial networks. Amir Ali's

[53] C.V. Findley, *Enlightening Europe on Islam and the Ottomans: Mouradgea d'Ohsson and His Masterpiece* (Leiden: Brill, 2019).
[54]"Lists of Special Collections," IOR Mss Eur F303/193, British Library.
[55]Ameer Ali, *The Law Relating to Gifts, Trusts and Testamentary Dispositions among the Mahommedans*, (Calcutta: Thacker, Spink & Co., 1885).
[56]L.W.C. van den Berg(ed. And trans.) *Minhâdj aṭ-tâlibîn, le Guide des ZélésCroyants. Manuel de JurisprudenceMusulmaneselon le rite de Cháfi'â*, 3 vols (Batavia 1882-4).

acknowledged assistance from the Governor-General of Netherlands India (current Indonesia) in procuring a copy of the first edition, published from Batavia.[57]

Of course, Amir Ali's views did not go unchallenged. In the 1890s, he found himself in outright conflict with his colleagues – both his co-judges in the Calcutta High Court, to which he had been appointed in 1890, and his personal friend, Sir John Woodroffe, the Advocate-General of Bengal. The point of contention was the validity of Islamic religious endowments, or *waqfs*, that benefited members of one's own family; British judges saw these as asset-shielding devices to defraud creditors, whereas Amir Ali insisted that they were valid in classicial *fiqh*. As a result, Amir Ali found himself arguing form the bench with the Advocate-General, and, unable to convince the other judges, writing dissenting judgments. One key dissent was written in relation to the case of *Bikani Mia v. Sukh Lal Poddar*, which tested the validity of a 'family *waqf*'. In order to prove that it was a permissible arrangement in Islamic law, Amir Ali claimed access to the entire world of Islamic juristic knowledge. He cited *hadith* from the *Sahihain* and the *Mishkat* of Al-Baghawi, a range of *fiqh* commentaries on the *Al-Hidaya*, especially the *Fath al-Qadir*, and Central Asian and Indian *fatawa* collections, such as the *Khizana(t) al-Muftiyin*; *Fatawa Qazi Khan* and of course, the *Al-Fatawa al-ʿAlamgiriyya*. In Amir Ali's rendition, all these works abounded in historic examples that demonstrated to any willing audience that family endowments (*awqaf ʿala al-aulad*) had been considered valid by Islamic jurists of the past.[58]

In the short term, Amir Ali's efforts were frustrated; even when these dissents were formally noted by the Privy Council, eminent British judges appeared unable to understand his references, and misrepresented him as merely quoting "abstract precepts taken from the mouth of the Prophet."[59] In the academic arena, professional rivals from Cambridge University warned students against buying his "misleading" books.[60] These challenges were really about the about the place of *fiqh* in the British-Indian system; his detractors refused to admit the legitimacy of re-deploying such a widened range of *fiqh* texts for re-defining and re-interpreting "Muhammadan law" as it had come to take shape the colonial system. Nevertheless, Amir Ali's books ran into several editions and were cited as authorities in Indian cases dealing with Islamic law from the 1890s onwards.[61] In 1909, as we have noted

[57]Ameer Ali, *The Law Relating to Gifts*, p. vi.
[58]*Bikani Mia v. Sukh Lal Poddar* 116 ILR Calcutta (1893); Amir Ali's dissent on pp. 132-
[59]*Abul Fata Mahomed Ishak and othrs v. RussomoyDhurChowdhry*, UKPC 64 (1894) http://www.bailii.org/uk/cases/UKPC/1894/1894_64.pdf
[60]For details, see Chatterjee, "Law, Culture and History".
[61] Ameer Ali, *Student's Hand-Book of Mahommedan Law* (2nd edition, Calcutta: Thacker, Spink and Co., 1894)

before, he was elevated to the Privy Council, being the first Indian as well as the first Muslim to be so appointed.

Amir Ali's commitment to the cause of family endowments (*waqf*s) points us to the reasons for his turning towards *fiqh*. The world of knowledge represented by of *fiqh* offered him a much wider range of authorities and arguments that helped him to marshal arguments in favour of a social cause that mattered much to him as a self-designated Islamic reformer and community spokesperson. Like other modern leaders of the community, including Sir Saiyid Ahmad Khan and his barrister-judge son, Justice Mahmud, he came to believe that the family *waqf* provided essential social and cultural capital to the elites (in his view, leaders) of the embattled Muslim community in India.[62] Justice Mahmud attempted to plug the problem through legislation and failed. Amir Ali attempted to solve it through legal interpretation and did much better.

Apart from the argumentative arsenal that these jurisprudential texts from Iran, Egypt and Turkey afforded him, Amir Ali would also saw in them signs of the undiminished vitality and worth of Islamic civilisation. Unlike in India, Islamic states had survived in the Ottoman empire and in Iran, and their laws offered him corroborating evidence about the persistent elasticity of Islamic law,[63] which, in some ways he equated with democracy.[64] Thus his legal pan-Islamism was also civilizational; and this would explain his passionate, if very miscalculated support for the Ottoman emperor as Caliph after the end of the WWI.[65]

Conclusion: Colonialism, print capitalism and Islamic jurisprudence

In this paper, I have argued that the field of Islamic jurisprudential knowledge did not just disappear with the imposition of a colonial legal system in India. I have attempted to show, through a case of study of an admittedly eccentric but prominent lawyer and judge, that it remained possible to learn about, obtain copies of and engage with classical as well as modern works of Islamic jurisprudence in late nineteenth-century India. Since Amir Ali's private papers were destroyed after his death on his express instructions and his posthumously published memoir offers little indication about his intellectual development; I have used his large corpus of legal writings in order to reconstruct his scholarly parameters. I

[62]Kozlowski, *Muslim Endowments and Society*; Guenther, 'Syed Mahmood', pp. 258-262, discusses how Justice Mahmud, son of Saiyid Ahmad Khan, helped draft a failed Muslim Family Waqf Bill in 1879.

[63]A. Ali, 'Review' of John A. Strachey Bucknill and Haig Ahisoghom S. Utidjian, *The Imperial Ottoman Penal Codetranslated from the Turkish* in *Journal of the Society of Comparative Legislation*, New Series, 14, 1914, 420-22, pp. 420—22.

[64]See Amir Ali, *The Rights of Persia* (London: Chapman, 1912), p. 7.

[65]

have also related the texts identified by such a methodology with the landscape of Islamic jurisprudential scholarship I have identified from publications by a previous generation of British and Indian lawyers to show that Amir Ali's seeming innovations were in fact part of a continuous process.

Identifying that process reveals that the field of Islamic jurisprudential knowledge was reinvigorated in the early nineteenth century by the printing of old and new works on the subject in India from the early nineteenth century. One part of this printing activity clearly related to the work of the British Orientalists, with their European peers and Indian assistants. The other part, however, was much more self-directed and market-oriented. There was clearly a market for Arabic, Persian and Urdu *fiqh* texts in India even in the late nineteenth and early twentieth centuries. The famous multi-lingual press of Lucknow, Nawal Kishore, printed a stream of *hadith* and *fiqh*texts, including the *Majmaʿ-yi Bihar al-anwar* (1867, BL copy) and *ʿAyn-i Sharh-iKanz al-Daqaiq* (1877; BL copy). The Mujtabai press of Delhi, which also printed collections of *fatwa*s produced by Shah ʿAbd al-ʿAziz,[66] printed a copy of the *Radd al-muhtar* in 1870-73 (BL copy). Colonial Indian *ʿulama* did not simply compile and evaluate *hadith* and mass-produce citation-less *fatwa*s in Urdu, they actively continued to author super-commentaries on the texts that we have been discussing so far, and people like Amir Ali were able to tap onto the produce of that intellectual world when they needed to do so.

Thus, while legal and institutional changes under colonial rule led to the serious constrictions in the space for Islamic law in South Asia, the work of Company Orientalists on the one hand and the popularisation of print on the other, allowed for a renewed efflorescence of Islamic legal scholarship and literature. This literature remained not just diverse, but popular, and indigenous intellectuals such as Amir Ali were able to connect reach into the *bazaar* of Islamic legal knowledge in order to re-introduce classical Islamic jurisprudence at the heart of Britain's colonial empire.

[66] M. Khalid Masud, "The World of Shah 'Abd al-'Aziz (1746-1824)" in Jamal Malik (ed) *Perspectives in Mutual Encounters in South Asian History: 1760-1860* (Leiden: Brill, 2000), pp. 298-314, at p. 300, note 9. There were several other branches (?) of the Mujtabai press – at Kanpur and Meerut.

Appendix

Islamic jurisprudential texts cited by Amir Ali and his colonial predecessors, in their publications; all dates are in the Common Era.

Sunni

Hadith collections:

The Six Sahihs (true [collections]) that are considered most reliable for Sunni Muslims, attributed to Imams Bukhari, Muslim, Tirmizi, Aby Dawud (Al-Sijistani), Al-Nasai and Ibn Majah, all composed in the ninth-tenth centuries CE, all reported to be published in India in the nineteenth century.

Imam Malik, *Muwatta,* composed in the eighth century, combines *hadith* and *fiqh*.

Al-Baghawi, *Masabih al-Sunnah,* composed in Iran in the twelfth century.

Muḥammad ibn ʿAbdullah Khatib al-Tabrizi, *Mishkat al-Masabih*, composed in Iran in the fourteenth century as an explanation on the *Masabih*, translated from Arabic to English by A.N. Mathews, and published in Calcutta, 1809-10.

Abu al-Saʿadat Mubarak ibn Athir al-Jazari (IbnAthir), *Jamiʻ al-usul fi ahadith al-rasul*, composed in the thirteenth century, including the *Muwatta* and other previous works, with explanations.

Al-Suyuti, also known as Jalaluddin, *Jamiʿ al-jawami*, composed by an Egyptian scholar of Persian-Turkish origin in the fifteenth century. This work is composed of two books named, like many others, *Jamiʿ al-kabir* and *Jamiʿ al-saghir*.

Al-Asqalani, *Muntakhab-i Bulugh al-Maram*, composed in the fifteenth century, published in Calcutta in Arabic with interlinear Urdu translations, re-published in the late nineteenth century.

Labab al-Akhbar, (identity of text unclear) published in Calcutta.

Jamal al-din al-Zaylaʿi, *Nasb al-raya takhrij ahadith al-hidaya*. The scholar may have been from Somalia; he died in Egypt in the fourteenth century. The work is cited by Amir Ali in the key case *Bikani Mia* and also in *Spirit of Islam*.

Fiqh and *Fatwa* collections:

Imam Muhammad b. Hasan Shaybani, *Jamiʿ al-Kabir*

----------, *Jamiʿ al-Saghir*

----------, *Mabsut fi furuʿ al-Hanafiyat*

----------, *Ziadat fi furuʿ al-Hanafiyat*

----------, *Siyar al-Kabir wa al-Saghir*

All these books, composed by the eminent scholar, Imam Muhammad in the eighth century, were together known as the *Zahir al-riwayat*.

Muhammad al-Quduri, *Mukhtasar al-Quduri*, an eleventh-century text, some parts of which were translated to Latin by a Jesuit scholar called Rosenmüller and published in Latin in from Leipzig in 1825.

Al-Jauharat al-Munirat, a commentary on the *Mukhtasar of al-Quduri*

Al-Sarakshi, *Kitab al-Mabsut*, an eleventh century commentary by a Persian scholar on an earlier Shaybanid work; highly respected in India in the nineteenth century.

Al-Muhit, said to be a Central Asian commentary on Imam Muhammad's works, composed in the eleventh century.

Al-Marghinani, *Al-Hidaya*, a Central Asian text composed in the twelfth century, translated by Charles Hamilton and published in 4 volumes in Calcutta in 1791; later publication of Arabic text in 2 vols in Calcutta in 1818; another Arabic edition together with its commentary, the *Kifaya*, edited by Hakim Maulvi Abdul Majeed and published in Calcutta in 1834; a Persian edition published in 1807, edited by Ghulam Yahya Khan and others.

Hussain al-Din Hussain bin Ali, *Nihaya*, a commentary on *Hidaya* (it appears distinct from Sheikh Tusi's tenth-century work)

Shaikh Akmal al-din Muhammad bin Mahmud, *Inaya*, a fourteenth-century commentary on *Hidaya*, published in Calcutta in 1837, edited by a Ramdhan Sen.

Imad al-Din Amir Katibbin Amir Umar, *Kifaya*, a commentary on the *Hidaya*, published in Calcutta in 1834.

Kamal al-din Muhammad al-Siwawi, surnamed Ibn al-Hummam, *Fath al-Qadir* a fifteenth-century commentary on the *Hidaya* produced in Iraq in the fifteenth century.

Al-Nasafi, *Kanz al-Daqaiq*, a Central Asian text produced in the eleventh or twelfth century.

Zain al-Abidin al-Misri, *Bahr al-raik*, a fourteenth-century Egyptian commentary on *Kanz al-Daqaiq*.

Ubaid Allah ibn Masud, *Sharh al-Wiqaya*, a fourteenth-century composition, published in Arabic in Calcutta, and later in Persian in 1868.

Mukhtasar al-Wiqaya, published in Arabic in 1835.

Shaikh Sirajuddin Al-Sajawandi, *Al-Sirajiyya*, a twelfth-century Central Asian text, published with an English translation together with *Al-Sharifiya* by William Jones in 1792; later published in Arabic in Calcutta in 1829, in Persian translation by Maulavi Muhammad Rashid in 1824.

Al-Jurjani, *Al-Sharifiya*, a fifteenth-century composition, translated from Arabic to English as the *Moohummudan Law of Inheritance,* Calcutta, by Neil Baillie.

Irtiza ‘Ali Khan Bahadur, *Faraiz Irtiziya*, said to be principal basis of law in south India by Morley, although he had not seen a copy.

Al-Uzjandi [Qazi Khan], *Fatawa Qazi Khan*, a twelfth-century Central Asian text, edited and published in Arabic in Calcutta in 1835 by Maulavis Muhammad Murad, Hafiz Ahmad Kabir and others.

Al-Marghinani Al-Samarqandi, *Fusul Imadiya*, a Central Asian text that was published in Arabic in Calcutta in 1827.

Al-Ghazmini, surnamed Najm al-din, *Kuniyat al-Muniyat*, a thirteenth-century Central Asian text, published in Arabic in Calcutta in 1829.

Burhan al-din ibn Maza al-Bukhari, *Zakhirat al-Fatawa*, a thirteenth-century Central Asian text.

Hussain ibn Muhammad as-Samani, *Khizanat al-Muftiyin*, a fourteenth-century text.

Imam ‘Alim bin ‘Ala al-Hanafi, *Al-Fatawa al-Tatarkhaniya*, a fourteenth-century Indian text.

Al-Hiskafi, *Durr al-Mukhtar*, a seventeenth-century text, published in Arabic at Calcutta in 1827, and earlier Persian translation of the section on discretionary punishments in 1813 in Calcutta.

Sheikh Nizam Burhnapuri and others, *Al-Fatawa al-ʿAlamgiriyya*, the best-known Indian *fiqh* text, sponsored by the Mughals and completed in the seventeenth century, published in six volumes in Arabic at Calcutta in 1828; Section on punishments translated and published together with the *Durr al-Mukhtar* Calcutta, 1813; Sections on sale translated to English and published by Neil Baillie, *Moohummudan Law of Inheritance,* Calcutta, 1850.

Al-Fatawa al- Sirajiyah, published in Arabic in Calcutta, in 1827.

Al-Fatawa Al-Naqshbandiya, an obscure text that is sometimes mentioned.

Abu al-Fath Rukn ibn Hisham al-din Nagauri, *Al-Fatawa al-Hamadiyya*, said to be a ‘modern’ Indian text, published in Arabic in Calcutta in 1825.

<u>Certain texts do not seem to have been cited in India prior to Amir Ali’s works. These include:</u>

Ibrahim Halabi, *Multaqa al-abhur*, composd in Turkey in the sixteenth century, and published in Arabic in Constantinople/Istanbul in 1835.

Shaikh zadah, *Majma al-anhar*, also a Turkish composition, published in Arabic in Constantinople/Istanbul in 1824.

Ibn Abidin, *Radd al-Muhtar*, composed in Egypt in the nineteenth century.

Shiʿa

Hadith collections:

Muhammad bin Yakub al-Kaliniar-Razi, or Rais al-Muhaddithin, *Jamiʿ al-Kafi*, a tenth-century text.

Abu Jafar Muhammad ibn Hassan al-Tusi, *Tahzib-al-Ahkam; Al-Istibsar*, texts produced in Iran or Iraq in the eleventh century

Abu Jaʿfar Muhammad bin Ali Bin Babavaih al-Qummi, *Man la yahduruhu al-Faqih* a text produced in Iran or Iraq in the tenth century

Together, the above are known as the *Kitab al-arbaʿ*; the four most important Shiʿa *hadith* books.

Muhammad b. Jarir al-Tabari al-Saqir , *Nawadir*, composed in the twelfth century

Muhammad Baqir bin Muhammad Taqi, *Bihar al-Anwar*, produced in Iran in the seventeenth century.

Fiqh and Fatwa collections:

Abu Jafar Muhammad ibn Hassan al-Tusi, *Mabsut; Nihaya; Muhit*, all eleventh-century texts from Iran/Iraq.

Shaikh Najmud-din Abu al-Kazim Ja'afar bin Muayyid al-Hilli, *Sharaya al-Islam*, published in 1839 in Calcutta, also in Lucknow and in Iran. Edited by Maulavi Sayyid Aulad Husain of Lucknow, late Head Professor of Muhammadan law (Shiʿa), College of Haji Mohsin at Hooghly, & Maulavi Zahur Ali of Bareilly

Shaikh al-Allamah Jamal al-dinibnYusufibn al-Mutahhir al-Hilli, *Tahrir al-Ahkam*, a fourteenth-century text from Iran, partly translated by Capt. John Baillie from a manuscript compilation created by Sir William Jones, and published as part of *A Digest of Mohummudan Law*.

Muhammad bin Murtaza, surnamed Mohsin, *Mafatih*

Baha al-din Muhammad Amili, *Jamiʿ-i Abbasi*, a seventeenth century text from Iran.

The 'third Mujtahid of Lucknow', *Rauzat al-Ahkam*, published in Lucknow in Persian in 1848.

Abu al-Qasimbin Muhammad Hasan Qummi, *Jamiʿ al-shattat*, an early nineteenth-century text from Iran, published in Tehran in Persian.