An Overview of Tsarist Policy on Islamic Courts in Turkestan:
Its Genealogy and its Effects

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Abstract

This paper is an overview of measures taken by the tsarist administration in Turkestan to interfere with the domain of Islamic law. It questions the idea that K. P. von Kaufman’s *ignorirovanie* policies did not significantly effect Islamic judicature, showing that the reforms introduced by the Russian administration consolidated power in legal matters in the hands of the Muslim judges to the detriment of other authoritative figures, such as the jurisconsults. After the Andijan uprising (1898) the policy of non-interference in Islamic legal matters was felt to be too permissive and was therefore abandoned. The new interest in Islamic courts and jurisprudence that emerged led to stricter monitoring of the sentences handed down by the courts and to some attempt to codify Islamic law. But this happened too late to significantly influence how the Islamic courts were administered: the Russian authorities in Turkestan were never interested enough in Islamic jurisprudence to study it in depth and did not profit from the “Orientalist” knowledge gathered in other Muslim regions of the Empire.

*Keywords:* Turkestan, Colonial Administration, Islamic courts, qāḍī, mufti.

Résumé

Cet article passe en revue l’ensemble des voies par lesquelles la pratique de la loi islamique au Turkestan s’est transformée pendant l’époque tsariste. En questionnant l’idée selon laquelle la politique de l’« *ignorirovanie* » [non-intervention] de K. P. von Kaufman n’a pas affecté de manière significative la jurisprudence islamique, il tente de prouver que les réformes introduites par l’administration russe ont

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consolidé le pouvoir juridique dans les mains des juges musulmans au détriment des autres figures de l’autorité, tels les jurisconsultes. Après la révolte d’Andidjan de 1898, la politique de non-intervention dans les affaires légales islamiques a été ressentie comme trop laxiste et a été de ce fait abandonnée. Le nouvel intérêt pour les tribunaux et la jurisprudence islamiques qui a alors émergé, a conduit vers une surveillance plus stricte des sentences émises par les tribunaux musulmans et à une certaine tentative de codifier la loi islamique. Mais ceci est arrivé beaucoup trop tard pour pouvoir influencer de façon significative la manière dont les tribunaux islamiques étaient administrés : les autorités russes du Turkestan ne se sont jamais assez intéressées à la jurisprudence islamique pour pouvoir l’étudier en détail et n’ont pas profité de la connaissance « orientaliste » qui s’était constituée dans d’autres régions musulmanes de l’empire.

Mots-clefs : Turkestan, administration coloniale, tribunaux islamiques, qādī, muftī.

Introduction

The changes that took place within the maktab and madrasa certainly had an impact on Muslim society in Central Asia after the Russian conquest that must not be played down. Indeed, their importance can be seen by the interest recent historiography has shown in the question. However, it must be recognized that sixteen years after the collapse of the USSR and the archival revolutions¹ that followed in its wake, most of the late nineteenth and early twentieth century studies on Central Asia’s history say little about the transformations the region’s Islamic institutions underwent.

This said, an alternative line of investigation must be followed. Rather than studying the institutions responsible for promulgating Islamic knowledge – one of the topics most often chosen by scholars in recent years – I will set forth the results of preliminary research² on the status of the Islamic courts in Turkestan during the period of Russian colonization. The first part of this contribution will therefore be dedicated to reconstructing the genealogy of the steps taken by the Russian colonial administration to “bring order” to the Islamic courts. The second part will investigate the effects these measures produced in the field of Islamic jurisprudence. To do this, our study will be based on an analysis of Muslim publications in Turkestan in the early 1900s, particularly the periodical al-Islāḥ, “The Reform”, published by Tashkent’s ‘ulamā’

¹ I have borrowed this expression from Graziosi, 1999.
² Research done between August and October 2006, made possible by a grant from Institut Français d’Études sur l’Asie centrale (IFEAC).
from 1915 to 1918. An analysis of articles published in this periodical will be
the basis for reflecting on the effects tsarist legislative measures had on Mus-
lim legal practice in Turkestan.

Before the February 1917 revolution, \textit{al-Islāḥ} was the Muslim periodical
with the highest number of subscribers. It was also the longest-lived non-State
sponsored publication in a native language to appear in Turkestan between
1907 and the Bolshevik revolution’s subsequent nationalization of the press.
In addition, from 1915 to 1917, \textit{al-Islāḥ} was the only periodical printed in the
governor-generalship of Turkestan that was entirely devoted to questions of
Islamic jurisprudence and did much to stimulate Muslim legal scholars’ inter-
est in the world of publishing. It was in fact \textit{al-Islāḥ} that served as a model for
the two periodicals – \textit{al-Īdāḥ} and \textit{Izhār al-Ḥaqq} – published in 1918 by the
Societies of the ‘ulamā‘ and of the fiqahā [Jurists] in Tashkent, which were
also in large part devoted to the discussion of juridical questions.\(^3\)

\textbf{Disregard or Intervention?}

In studies dealing with the Russian colonization of Turkestan, in particu-
lar the influence foreign-born administrators had on the life of the region’s
indigenous Muslim population, historians have tended to emphasize von
Kauffman’s policy of “disregard” [ignorirovanie] of Islamic institutional and
cultural activities.\(^4\) This policy, according to Daniel Brower, was based on a
clearly contradictory theoretical basis. On the one hand the Governor-Gen-
eral was deeply prejudiced against the piety Muslims generally manifested
and feared pan-Islamic conspiracies orchestrated by the Ottoman Empire. On
the other, he claimed to be in favour of the policy of tolerance begun by
Catherine II.\(^5\)

What particularly distinguishes von Kaufman’s policy of disregard was his
decision not to subject the Islamic authorities (‘ulamā‘) to a spiritual direc-
torate.\(^6\) This decision reflects a strategy opposite to the one that had led to the
founding of the Spiritual Assembly of the Muslim Law, first in Ufa in 1788, and
then in Orenburg after 1796,\(^7\) in addition to the founding of similar institutions

\(^3\) For further information on this point, see Sartori, 2008a.
\(^4\) Konstantin Petrovich von Kaufman (1818–1882) was Governor-General of Turkestan between years 1867
and 1882.
\(^5\) Brower, 2003, p. 33.
\(^6\) Usmanova, 2005, p. 119; Arapov, 2001, p. 293.
\(^7\) Azamatov, 1998; \textit{idem}, 1999.
in Crimea and the Transcaucasia. As both Frank and Naganawa have noted, in neither Muslim nor imperial law were the ‘ulamā’ called an estate, yet the very creation of these “spiritual assemblies” in fact created “a state-controlled administrative apparatus staffed by Muslim clergy”. Formally, the assemblies had a variety of duties, such as administering Islamic law and validating (through a system of examinations and licences) the elections of teachers, juridiaries, imāms, and mu‘addins, at the maḥalla level. This does not mean that the assemblies mentioned above strictly controlled all of these offices. Not only did some of the ‘ulamā’ refuse to recognize the authority of the Orenburg Spiritual Assembly, but the Assembly, which was entrusted with the task of administering vast territories, also did not always manage to impose its monopoly in nominating officials.

Von Kaufman had other plans for Turkestan. He did not want to administer Islam but rather wanted to eliminate the threat it represented. He was convinced that once the state’s support was taken away, Islamic institutions would collapse and be replaced by a more advanced civilization, that of Orthodox Christianity. For this reason, as of March 4th, 1880, the Spiritual Assembly of Orenburg was officially forbidden to extend its influence into the governor-generalship of Turkestan.

We now need to consider how the ignorirovanie policy was put into practice in relation to islamic law, and explain the context in which von Kaufman began to operate in 1867. Before him, in the two years from 1865 to 1867, the foreign-born Russian authorities and native-born Muslims had made several attempts to collaborate. Mikhail Grigor’evich Chernjaev (1828–1898), who led the Russian conquest of Tashkent in 1865, is known to have been favourable to the Tashkent ‘ulamā’. In fact, immediately after the city was conquered, he reconfirmed İshān Ḥakim Khwāja Nār Khwāja İshān ūğlī in his position as Chief Judge [qāḍī kalān / aqāḍ al-qāḍā / qāḍi al-qądāt]. This should be seen not as an isolated concession, but rather as the first step taken by the Russian

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8 On the Muslim Spiritual Administration established in Tbilisi see Mostashari, 2006, pp. 86-90.
10 Frank, 2001, p. 102.
11 Echoes of the dissent against the authority of Orenburg Spiritual Assembly were studied by Dudoignon, 2001.
authorities to involve the ‘ulamā’ in city government. A document signed by Chernjaev and by Gruzd’ – at the time the only Russian official assigned to the civil administration in Tashkent – in fact approved a list of seventy-three names to serve as a‘lam,\textsuperscript{15} muftī, ra‘is, and madrasa teachers there, names which had been given to the Military Governor by the Chief Judge himself.\textsuperscript{16}

After Chernjaev, Dmitrij Il‘ich Romanovskij (d. 1881) was named Military Governor of Turkestan in June of 1866. Under his supervision, there was a first, modest attempt to reorganize the city’s four Islamic courts [qādi-khāna], each situated in one of the Tashkent city’s four daha (districts). In August 1866, the four Islamic courts were replaced by a collegial legal body called mahkama [tribunal], presided over by a single judge [qādī], flanked by three counsellors, one older man and two younger ones, elected by two hundred authoritative representatives of the city’s Muslim community. A Russian official in the city administration was responsible for overseeing its work. It was decided to set up a “Kazakh section” of this legal body, composed of three biy, experts on questions of “customary law” [‘ūdat].\textsuperscript{17} This section was also presided by the same Russian official. In this way, only one of the four qādīs, who until this time had worked in the city, continued working in the Tashkent mahkama. The other three were to keep their titles and serve as counsellors to the Governor.\textsuperscript{18}

Recent research has emphasized the fact that the mahkama was a typically colonial institution and was immediately abandoned because it was not consonant with policies of non-interference in Muslims’ lives.\textsuperscript{19} In particular,

\textsuperscript{15} In the southern-central regions of Central Asia, a‘lam was used as an alternative to muftī, as a term of respect for an expert on fiqh. The use of the term probably derives from the Arabic expression a‘lam al-‘ulamā‘, “the most learned among the erudites”. Kazakov (2001, p. 69) suggests that in Bukhara a‘lam was the short form of “muftī-i a‘lam, head muftī, in charge of giving judicial response to the non-military civilian population”. The meaning and the use of this word deserve further investigations.

\textsuperscript{16} CGA RUz, f. I-164, op. 1, d.3, ll. 1-3ob. The document is written in Russian and turki. Chernjaev’s and Gruzd’’s signatures are on folios 1ob and 3ob, as are their initials written in Arabic script. The first page bears the following date, written in Arabic: 1282, i.e. 1865/1866. Barthold claimed to have seen an ordinance issued by Chernjaev that confirmed Ishān Hakīm Khwāja in his position as qādī kalān and also kept several other individuals in the positions they had previously filled. These people’s names, the Russian scholar argues, were entered on a list, which was not, however, a part of Chernjaev’s ordinance; the document in question is probably the one we found in the Central State Archives of the Republic of Uzbekistan. The list of names is divided in two parts, each of which represents two areas in the city. Each of these two parts is further subdivided, with jurists [qādī, muftī, a‘lam, shaykh al-islām] on one side and teachers [mudarris] on the other.

\textsuperscript{17} For further information on customary law in the Kazakh steppes during the Russian colonial era, see Martin, 2001.

\textsuperscript{18} Bartol’d, 1963, pp. 354-355; Azadaev, 1959, pp. 92-94. Barthold and Azadaev cite the memoirs of Romanovskij (1868).

\textsuperscript{19} Usmanova, 2005, p. 119.
probably on the basis of the description given by Vasilij V. Barthold [Bartol’d] (1869–1930), it was thought to have been inspired by the *mahkamas* in the Caucasus and Algeria. What is important to keep in mind is that the most influential specialists on Islamic law in the Russian Empire, those who “proposed to create a network of state-run Islamic courts in the Caucasus, […] were influenced by the French experience with the creation of a centralized *qādī* bureaucracy in Algeria.” Nor should we exclude the hypothesis that the creation of a central judicial body came in response to a request from local Muslim jurists. In fact a group of Tashkent’s ‘ulamā’ turned to Chernjaev, when he became Governor-General of Turkestan (1882-1884) to obtain approval for founding an Islamic judicial body. The two letters they wrote are undated and bear the seals of five authoritative figures in Tashkent’s Muslim community. The first states that a new consultative assembly [*majlis*] had been set to enforce religious rules and standardize laws [*istiḥkām-i qawā’id-i din-i mubīn wa intīzām-i qawānin-i shar’ ʿūchūn*]. The institution was called *mahkamat al-islām* [tribunal of islam]. Its president [*ṣadr-nishān*] was to be known as *ṣadr al-sharīʿat*, and its members [*chilānlār*] as *amīn al-dīn*. What is particularly interesting is that the first of the two letters addressed to Chernjaev explained that there had been unanimous agreement [*bzālār hammamīz ittifāq birla*] that Muḥammad Muḥiy al-Dīn Khwāja ʿYshān (1840–1902), the son of the last *ḥakīm Khwāja ʿYshān*, should be appointed president. This suggests that at this time, influential positions in the community were handed down from father to son. The second letter asks Chernjaev [*janāblāridin iltimās qilāmīz*] to issue an order [*farmāyish qilsalar*] that would officially recognize the new institution’s name, titles and hierarchical structure.

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22 Kemper, 2007, pp. 81-82.
23 It would be perhaps worth reminding that in Turkestan the use of the term *mahkama* for denoting an Islamic judicial institution predated the arrival of the Russians. Infact, it was commonly employed to refer to the notary office of the *qādī* court. See Sartori, 2009.
24 A Russian source indicates that Chernjaev attempted in 1884 the establishment of a special commission for Muslim religious affairs, see Arapov, 2006, p. 195.
25 From the Russian *chlen* “member.”
26 Some information about Muḥammad Muḥiy al-Dīn Khwāja ʿYshān can be found in Ostroumov, 1899, pp. 203-206; *idem*, 1908, pp. 125-131.
27 CGA RUz, f. I-164, op. 1, d. 2, l. 1.
28 CGA RUz, f. I-164, op. 1, d. 2, l. 2. The founding of an Islamic court under Chernjaev’s supervision is described in quite different terms by a reporter at the time, *cf.* Erkinov, 2004, pp. 63-65, note 188.
Konstantin P. von Kaufman’s arrival in Tashkent and his appointment as Governor-General for Turkestan represent a turning point in the government’s relations with Muslims, compared to the attempts to collaborate with the ‘ulamā’, undertaken by Chernjaev and, to some extent, continued by Romanovskij. Although von Kaufman believed in the beneficial effects of a slow, inevitable process of “closing the distance” [sblizhenie]\(^{29}\) between the culture of the indigenous Muslim community and that of the Russian conquerors, it was during his administration that the first major changes concerning the Islamic judiciary and practice of law came about. Von Kaufman’s first move was to organize the governorship’s civil administration on the basis of the Provisional Statute for administering the provinces of Semirech’e and Syr Darya [Proekt polozhenija ob upravlenii Semirechenskoj i Syr-Dar’inskoj oblastej]\(^{30}\) drawn up in 1867 by the Steppe Commission,\(^{31}\) in particular, Alexander K. Gejns,\(^{32}\) “a graduate of the General Staff Academy and experienced practitioner (perhaps self-taught) of geography and statistics.”\(^{33}\) Von Kaufman appointed Gejns, as head of Turkestan’s chancery, to preside over an organizing committee composed of twelve Russian officials and forty representatives of the local population, which at the end of January 1868 was given the task of putting the regulations set forth in the Provisional Statute into effect in Tashkent.\(^{34}\) As Dobrosmyslov wrote:

“Organizing the administrative system began in Tashkent, in part because if in this city, which was a centre of Muslim life, this had been successful, it would then have served as an example for all the other cities [in the region].”\(^{35}\)

What was principally involved was putting into effect parts of the Provisional Statute that were aimed at regulating how a judge could be appointed and what his jurisdiction would be. It is common knowledge that in Central Asia, Khans and Emirs appointed the Muslim judiciary prior to the Russian conquest. In Tashkent, the office of qāḍī, muftī, shaykh al-Islām, and a’lam were all appointed by the Khan of Kokand, by one of his ministers (for example the

\(^{29}\) Ostroumov, 1899, pp. 46-47. Afterwards, the idea of “closing the distance” was supplanted by that of “fusion” [slijanje]: Lykoshin, 1916, p. 56.

\(^{30}\) Dobrosmyslov, 1911, p. 93; Azadaev, 1959, pp. 95-96; Baqirov, 1967, p. 17.

\(^{31}\) Azadaev, 1959, p. 95.

\(^{32}\) Dobrosmyslov, 1911, p. 93.

\(^{33}\) Brower, 2003, p. 45.

\(^{34}\) Azadaev, 1959, p. 96.

\(^{35}\) Dobrosmyslov, 1911, p. 61.
qūshbigi), or by a bek\textsuperscript{36} issuing a royal patent [yārlīgh], usually written in Persian.\textsuperscript{37} The Provisional Statute for administering the provinces of Semirech’e and Syr Darya instead outlined an electoral process for filling the office of the qāḍī: every three years a consultative assembly composed of representatives of fifty families [īlikhāshi] was to elect a judge who would then be confirmed by the Governor. Anyone over the age of twenty-five who had never been arrested or convicted of a crime was eligible for office.\textsuperscript{38} While traditionally it had been the right of local Muslim rulers to appoint a judge or remove one from office, the introduction of the new measures by the Russian administration meant that qāḍīs would be chosen by popular vote. In doing so, the Russians hoped to reduce the sphere of influence of the families that, with the backing of the reigning dynasty, had traditionally provided all the region’s ‘ulamā’. As we shall see, the hope was vain\textsuperscript{39}.

In addition, the project provided for the territorialization of the court’s jurisdiction.\textsuperscript{40} This meant that a plaintiff could only bring a case before the qāḍī in whose jurisdiction the defendant lived.\textsuperscript{41} This new procedure represented a major change in the way Muslims could bring suits, as previously a plaintiff had been able to choose whatever court he felt would be most favourable to his case.

The Provisional Statute for the local administrations in the provinces of Semirech’e and Syr Darya also included articles intended to limit judges’ authority. An individual qāḍī could only try civil suits and only when the amount involved was less than one hundred roubles. Suits in which the amount involved was higher, and all criminal cases that were not under the jurisdiction of the Russian courts, had to be tried by a special assembly of qāḍīs [s’ezd kaziev / siyizd-i qāḍī]\textsuperscript{42} with a Russian official from the city as a participating member. The Russian was not supposed to intervene in proceedings. His role was instead to ensure that the assembly did not abuse its

\textsuperscript{36} Baqirov, 1967, pp. 9-11.

\textsuperscript{37} Ḥakīm Khwāja ʿIshān, last Chief Judge of Tashkent, was appointed to office in 1280/1863 by a decree of Mullā ʿAli Qulī (ʿAlīmqūl), amīr al-umarāʾ [Prince of princes] and amīr-i ʿlashkar [Commander in chief] of the Kokand khanate between years 1863 and 1865, cf. Mullā Muhammad Yūnus Djan Shighavul Dadkhah Tashkandi, 2003, p. 76.

\textsuperscript{38} Proekt polozhenija, 1960, § 217-220, p. 300.

\textsuperscript{39} This and related issues have been further investigated in Sartori, 2008b.

\textsuperscript{40} Ibidem, § 221, p. 301.

\textsuperscript{41} Ibidem, § 225, p. 301.

\textsuperscript{42} Ibidem, § 226-227.
power. There were also changes in the penalties the courts could inflict. Corporal and capital punishment were abolished, while fines could not exceed three hundred roubles and prison sentences eighteen months. The measure the tsarist administration adopted that did most to limit the authority of the Islamic courts may have been a provision which allowed the parties in a case to appeal to a Russian court if they were dissatisfied with the sentence handed down by a qādi. As the examples given by Crews demonstrate, thanks to the enforcement of the new measures, the Russian courts became an alternative system that Muslims in Turkestan could turn to when legal disputes arose. The decision to approach legal reform in Turkestan by introducing the measures described seems to be an indication that the Empire was putting administrative knowledge accumulated in its other regions with Muslim majorities to good use:

“The Russians had the examples of the Caucasus and the Crimea, where the Kazis had been retained, and where by giving a right of appeal or choice, on consent of both the parties, to the Russian Court, the importance of the Kazis had gradually diminished […]”

In 1886, four years after von Kaufman’s death, a “Statute for the Administration of Turkestan” [Polozhenie ob upravlenii Turkestana] was officially approved. It reintroduced the regulations of the Provisio Statute of 1867 that – as we have seen – had already been enforced. In fact the Russian historian Dobrosmyslov felt that the 1886 Statute did not introduce any significant changes to the provisional one of 1867. The exceptions were that the term sud-kazij [qādi Court] was replaced with the term narodnyj sud [People’s Court] and two levels of sentencing were introduced. Trials were to be held first in a “people’s court”, after which parties had the right to present an appeal to one of the special assemblies of qādis [s”ezd kaziev].

Here it is important to point out that recent research on the policies the tsarist administration adopted concerning Islamic legal practice in Turkestan attribute the articles related to regulating elections, the courts’ jurisdiction,
and legal proceedings to the Statute of 1886. This interpretation does not seem to be consistent with what is indicated in the documents coming from the Islamic courts themselves, which instead suggest that such regulations were first enforced under the Provisional Statute of 1867. There is no other way to explain why we find transcriptions of the sentences handed down by the special assemblies of qādīs [s′ezd kaziev] in court registers dated as early as 1869 or why the roster of judges serving in the city’s four courts should clearly indicate that the triennial system of elections was being used before 1886.

In the long term, the effects of these measures were not those von Kaufman had hoped for. Although judges were elected, this did not significantly renew the hierarchy of the Islamic courts. The list of qādīs working in Tashkent’s Islamic courts clearly indicates that judicial positions were “occupied” by the same people for more than one three-year mandate and that this phenomenon was common in all of the city’s four districts. This seems to depend on the fact that the qādīs “could rally a party of supporters amongst the wealthy householders who made up their electors or were simply the tool of a particular faction”. For example, Muḥiy al-Dīn Khwāja ʿĪshān (mentioned above) was returned to office as a qādī in the Sibzar quarter several times: from 1878 to 1880 and again from 1887 to 1892. He then actually managed to be re-elected in 1896 and held the job for the entire three-year period that followed, despite the fact that he had been removed from office in 1892 when he had been involved in the disturbances that took place in the city after the cholera outbreak there.

Change, albeit only apparent, came after February 1917. When Fedor Kerenskiy’s provisional government came to power, freeing the courts – and consequently Islamic legal proceedings – from the monopoly exercised by a handful of people, was one of the key issues in the election campaign for the city Duma.

49 Crews, 2006, p. 268.
50 As was previously indicated by Baqirov, 1967, p. 18.
51 CGA RUz, f. I-362, op. 1.
52 Cf. Tāshkandning qādilāri wa shahr siyāz qādilārin akt wa ḥukm daftarlari [Registers of the civil records, sentences and special assemblies of Tashkent qādīs], CGA RUz, f. I-362, op. 1, d. 59, ll. 7-22. For more information on this subject see Sartori, 2008.
54 CGA RUz, f. I-362, op. 1, d. 59, ll. 11, 19-20.
Shurāy-i Islāmiyya, the coalition that had brought together Tashkent’s various Muslim movements and associations immediately after the February revolution, published a proclamation [khiṭb-nāma], which began:

“Respectable Muslims of Tashkent! You know that the Shurāy-i Islāmiyya of Tashkent was born thanks to your enthusiasm and your unity. It has, in three, four months, continued, as well as it was able, to carry out its task, beginning to liberate you from the hands of the police of the old tyrant and deliver you into those of just and honest Muslim men of government. qādīs who were fairly elected by the whole populace have taken the place of the illegal, corrupt ones who took bribes…”

Incidentally, Shurāy-i Islāmiyya was successful, at least at first, in reaching its goals. Thanks to its intercession, on 9 April 1917, Abdullāh al-Wāḥid Qāri (1867–1938) was elected by a wide margin and became a new qādī on the Shaykhantaur court. Reading the Muslim press in Tashkent, it seems that his victory was greeted with approval and enthusiasm for the prospects for change it seemed to make possible:

“In conformity with new epochs and times […] it was necessary to renew qādīs and the courts. Everyone knows how urgent such changes were; there is no need for further comment. As Shurāy-i Islāmiyya’s principal task is to renew the Islamic qādīs and Islamic courts […] it has assumed the authority, with the people’s consent, to appoint a new judge, with the title of “qādī of Islam” for each of the four districts of Tashkent.”

Clamorous proclamations like this were not followed by the radical changes that had been hoped for. Abdullāh al-Wāḥid Qāri did not manage to stay in office for long. Not only were his duties principally those of a notary, but as early as the end of 1917, a few months after his election, his office was occupied by Nuṣrat-Khān, who since 1914 had been standing in for Mullā ‘Arīf-Khān, who had served as a judge since 1901.

Apart from temporary changes in who would serve as judges, the regulations introduced by the Provisional Statute of 1867 and ratified by the Polozhenie of 1886 remained in force until after the October Revolution, until January 1918, when the Society of the ‘ulamā’ in Tashkent, at the end of a public meeting, signed a document inviting the city’s Muslims to systematically ignore the

56 Khalid, 1996.
59 CGA RUz, f. I-362, op. 1, d. 59, l. 7.
Statute of 1886 as well as all instructions issued by the tsarist administration that went against the *shari‘a*. But even after this proclamation little changed. A few weeks later, new elections were held to choose a judge for the Kukcha district. The magazine *Chayân* carried an editorial comment on the event, in which the jurists standing for election, apparently giving rise to fighting between different factions, were accused of careerism and labelled “seditious, irresponsible and parasites of the nation [millat mikrublari], on the same level as Muḥiyy al-Dīn” [Īshān Khān], the qādi in Sibzar mentioned above.

**Monitoring the Islamic Courts**

Von Kaufman’s successors after 1882 continued to administer Turkestan following the principle of non-intervention in Muslim public affairs. This policy was enforced until 1898 when it was considered a failure as a strategy and openly criticized because of the uprising in Andijan. From that moment on, the political police [Okhrannoe upravlenie] closely monitored Islamic institutional life in Turkestan. Obsessions with pan-Islamist plots aside, the tsarist authorities in Turkestan finally realized that until then Muslims had had considerable space for directly managing their own laws, but also admitted they knew little about how Islamic law functioned. In 1898 Governor-General Dukhovskoj, who was planning to establish a Spiritual Administration for Turkestan, set up a commission responsible for drawing up a “Provisional Statute for People’s Courts in Turkestan” [*Proèkt polozhenija o narodnom sude v Turkestanskom krae*]. The commission’s report was presented to the Minister of War and the army’s general staff in December of the same year.

It is clear from the letter introducing the “Provisional Statute for People’s Courts” that there were a number of officials within the Russian administration who wanted to put a stop to observance of the *shari‘a* in Turkestan and make the indigenous population completely subject to Russian legal authority. However, Dukhovskoj and the commission mentioned above were aware that such a measure was unworkable:

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61 Anonymous, 1918b.

62 Jā. N., 1911; Ostroumov, 1899, p. 46; Brower, 2003, p. 93.

63 For information on *Ochrannoe otdelenie* reports on Turkestani Islam, see Khalid’s text in this volume.

64 For the details of this plan see Arapov, 2006, pp. 194-227.
“Notwithstanding abuses and injustice, and despite the diversity that there is between the indigenous inhabitants’ opinion of law and the Russian conception of it, the complete elimination of the people’s court before the time is ripe, is in contrast with the fact that our knowledge of the mentality and customs of the native inhabitants is superficial, particularly as we need to know most of them through interpreters, individuals who in no way distinguish themselves as being morally irreprehensible.”

At this point the commission proposed

“gradually improving the people’s court, without radically reforming it” [because] “only a careful resolution of the question will make it possible, while maintaining the people’s court, to introduce those changes addressed exclusively towards its reorganization and the future submission of all legal matters in the region to Russian courts.”

How then should this be done? What gradual improvements of the Islamic court were needed? Most importantly, the work done by the commission had shown that some provisions in the Statute of 1886 had had a negative influence on the exercise of Russian authority in the eyes of the Muslim population. The commission, in fact, had found that

“the vast jurisdiction over trials accorded to the people’s court by the Statute of 1886 contributed enormously to increasing the importance of the people’s court in the eyes of the indigenous inhabitants and their immovability made that importance even greater; having granted them the right to inflict punishments that exceeded those established in Russian law for the same crimes, having set the people’s court above even the Russian court of first instance.”

In light of these considerations, Dukhovskoj’s proposal was to limit the courts’ power by introducing the following measures:

“modifying the election system; reorganizing the courts’ and judges’ compensation; decreasing their jurisdiction; increasing the possibility of revoking their sentences and making the administration’s control over the actions [of the people’s courts] more immediate.”

Dukhovskoj’s “Provisional Statute for People’s Courts” was never made into a law. Nevertheless, some Russian officials independently began to keep a closer eye on the day-to-day practice of Islamic law. Captain Enikeev’s

65 CGA RUz, f. I-1, op. 25, d. 65, ll. 2-2ob.
66 Ibidem.
experience deserves particular attention. Enikeev seems to have been the first to study the negative influence the wakils [legal agents, proxies] wielded in Islamic court proceedings and to have taken measures to limit their intrusiveness. A long article by Enikeev published in Turkestanskie vedomosti describes how at the time it was routine for qādis and proxies to reach an agreement with whoever offered to pay more:

“It was not only one time that I heard this story. In the courtroom of a certain qādi there is a very shrewd wakil. When the hearing begins the wakil used gestures to let the qādi know how much the party he was defending had given. To do this he used his fingers and scratched his head: the number of fingers indicated how much he had got, but if he struck or scratched his forehead with his palm, then this meant that the case must unfailingly be concluded to that party’s advantage, inasmuch as the bribe would in any case be bigger than the one offered by the other party.”

The monitoring of the Islamic courts, which began under the Provisional Statute of 1867, as was said, allowed the Russian officials the opportunity of participating directly in the practice of Islamic jurisprudence. This is Enikeev’s description of what this entailed:

“At the beginning of my activity as a district official, I tried as much as I was able to be present at hearings, both those held by individual judges and those of the assemblies of the qādis. The principal reason I did this was to familiarize myself with legal procedures, then, secondly, to get a better idea of what each of the judges was like, something which was extremely important to know. Knowing in advance which cases were going to be heard, I found information about what had been deliberated (according to the shari’a) on the issue in question. Having gained complete mastery of the indigenous language, I sat in a corner and observed the trial. It was a great emotion when I participated in decisions on how the shari’a applied to the questions being discussed and everyone was pleased that the tjura knew the shari’a. The result was that those who appealed to the assemblies of the qādis would ask me to participate; when I could not be present on the day for which the hearing was scheduled, some people contrived to delay the case until the subsequent hearing.”

This account of Enikeev’s experience gives quite a particular picture of the complex effects of the tsarist intrusion in the world of Islamic law in Turkestan. On one hand, as has already been seen, the Russian courts represented an

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67 Enikeev, 1898.
68 From the Uzbek to’ra, “gentleman, noble.”
alternative to Islamic legal authority, as Muslims could appeal cases to them if they were dissatisfied with the sentences issued by Islamic courts. On the other hand, however, there were Russian officials like Enikeev, who had mastered the local languages, demonstrated their knowledge of Islamic jurisprudence, and taken on the role of guarantor for the correct interpretation of the *shari’a* in Islamic court proceedings.

Enikeev’s experience also demonstrates how it was the Islamic legal traditions themselves that influenced the day-to-day practical decisions made by the representatives of the colonial administration to “bring order” to the Islamic courts. Particularly interesting in this regard, is the account of the measures Enikeev adopted to put an end to the excesses of “legal agents”:

“[… ] in the people’s courts everything is done in the presence of *wakils*; they do great harm. One of these ‘intermediaries’ particularly drew my attention to himself for the fact that he participated in the most obscure cases and inevitably it was the wealthier party that won. Following him by ‘legal means’ was impossible. Since there were many complaints against him from local people, I ordered the people’s courts in my district not to allow this *wakil* to participate in hearings. I had no right to do so, but it needed to be done. As it is customary, the first thing to happen was that the *wakil* wrote anonymous complaints about me to the Governor and Public Prosecutor, then wrote to me directly [against] my regulation. I was then ordered to revoke it. We need to note, however, that four years before mine, the same regulation had been issued. On the strength of the fact that in the “Statute” [of 1886 P.S.] nothing is said about intermediaries, I asked the judges in my district to give me the regulations of the *shari’a* on this question. Of the nine *qādis* in my district, only one did the job honestly and had me sent a large number of *riwāyats*, a fact which aroused the animosity of the other *qādis*. What emerged from these *riwāyats* was that: 1) only in extraordinary cases can the *qādī* allow the lawyers to be present at the preliminary hearing; in general, cases have to be resolved through direct questioning of the parties involved and of witnesses and that 2) it is the duty of the *hākim-i wilāyats* (i.e. the most important *uezds* and district officials) to superintend so that procedures are scrupulously followed by everyone, including the *qādis*. From this it can be concluded that I was right when I established a regulation of this sort.”

69 In Central Asia the term was used to mean *fatwā*. I hope to discuss the use of the term in the legal field there (a usage which appears to have been characteristic only of the local Hanafite school) in a future paper.

70 “Governor of a province”.
When Enikeev decided to prohibit the wakil from being present in the Islamic courts, he could not turn to the laws the Russian administration had adopted in Turkestan. In the Statute of 1886 there was no specific provision regulating lawyers’ activities in the Islamic courts. This shows how the legal framework was inadequate in providing Russian officials with the legal means they needed to be able to take a meaningful part in cases discussed before Islamic courts. Probably because he was used to having recourse to Islamic jurisprudence, he consulted the Islamic courts in his district to obtain authoritative opinions [riwāyat, fatwā] on the question of the legality of the lawyers’ activities and then, on the basis of these opinions, Enikeev justified his own decision a posteriori. At this point, he could claim that the decision to keep the wakil out of the court was “just” – because it was just according to Islamic law.

Although his approach may appear to be eccentric in comparison to the procedures of other colonial administration officials, Enikeev’s work proved to be particularly useful in providing the colonial administration with information about how the Islamic courts functioned. In fact, the authoritative opinions he had been given by the Muslim jurists were sent to the chancery of Turkestan’s Governor-Generalship which, on the basis of this documentation, issued an order on 18 November 1898 “to limit the presence of lawyers in the discussion of cases in people’s courts, doing everything necessary in order to paralyse the harmful wakils.”

Codifying the sharī‘a

Nearly at the same time that Dukhovskoj’s “Provisional Statute for People’s Courts” was being drawn up, there were moves to begin to codify Islamic law. As we have seen, interest in this field increased when it was realized that the administration lacked the means necessary for controlling the procedures related to hearings and to settlements in cases held in the Islamic courts. The Russian officials in Turkestan felt the need to codify the sharī‘a, transforming it into a series of clearly established provisions. In other words, they wanted a “colonial shariat,” a code that would be easy to interpret and whose application would no longer be subject to the hermeneutic discretion that characterized the work done by judges and jurists. As had happened elsewhere in the

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71 CGA RUz, f. I-1, op. 13, d. 25, l. 2.
72 This expression comes from Messick, 1993, pp. 58-66.
Russian Empire, the first moves towards codifying the *shari’a* led to the discovery that in Turkestan, Muslim law was practiced following the Hanafite legal school. Enikeev in fact wrote that

“considering the clear need to limit the jurisdiction of people’s judges, on the one hand, and to protect the native inhabitants as well as the judges from the various *wakils*’ vehemence […], on the other, we must establish standard procedures and a uniform system of penalties for the people’s judges to observe. Reaching this aim is simplified by the fact that Muslims in Central Asia are followers of the Hanafite doctrine. If we compile a detailed code of laws according to Abu Hanifa […], the various *wakils* will no longer be able to issue *rivajats* [in accordance with] other ‘great masters’ [of law]. This work should be done in collaboration with Russian legal experts, with representatives of the administration and with *qādis* and madrasa teachers.”

The first step was translating the *al-Hidāya* by Burhān al-Dīn al-Marghinānī (twelfth century), a widely read “classic” of the Hanafite doctrine in Turkestan and India, into Russian. It was no accident that the Russian edition was based on the English translation of 1791, and not on the original Arabic text. Authorship for the document, which appeared in 1893, can be attributed to Governor Grodekov, former Governor of the Syr Darya oblast’ and a “second-generation” colonial official with a good command of local languages, who had spent many years studying “customary law” [*ādat*]. The 1905 edition of the Russian translation, Barthold says, sold widely, an indication that it was used for practical purposes. The Russian scholar adds that in Turkestan when the possibility of creating an institute for training officials to work in the provincial administration [*zemskie nachal’niki*] was discussed, there was a proposal to use the Russian translation of the *al-Hidāya* as the manual the officials could refer to for monitoring Islamic courts.

The most ambitious initiative in the sphere of codification of Islamic law in Turkestan was the work done in 1906 by Count Konstantin K. Palen (Pahlen),
head of an investigative commission responsible, among other things, for studying Turkestan’s Islamic courts. The first outcome of the investigation was a publication that attempted to bring together, in a systematic way, a representative selection of authoritative opinions from Islamic legal experts on a variety of subjects.\(^79\) The Russians once more turned to the experience the British had gained in India, on the grounds that Indian Muslims followed the Hanafite school of law, as the Turkestanis did. This “code”, which ignored a previous translation of the *Hidâya*,\(^80\) was based on the comparison between the second edition of *The Digest of Anglo-Muhammadan Law* (London, 1903) by Sir Roland K. Wilson\(^81\) and the work of a mixed commission made up of Russian officials and Muslim judiciaries – as had previously been advocated by Enikeev – that studied Hanafite doctrine with a view to codifying family and inheritance law.\(^82\) Because so little importance was given to interpretation and judicial discretion, the publication provided its Russian readers with a limited understanding of the shari‘a, conceived as a fixed body of immutable rules. The publication’s importance was acknowledged by Petr Cvetkov, an Orientalist who had worked in the service of the Russian Empire in Istanbul before being assigned to Tashkent. He too suggested that codifying sharaitic norms would be the best way to redress the injustices of Turkestan’s Islamic courts. His contribution on the subject was an annotated Russian translation of the Ottoman civil code [*Mejelle*], published in three volumes in Tashkent in 1911.\(^83\) In addition, Nil S. Lykoshin, after carefully observing the activities of the Islamic courts and assemblies of qâdis in Tashkent, concluded that the absence of standard versions of the shari‘a and ‘ādat was the most serious obstacle to overcome if the Russian officials presiding over these courts were to be able to fulfil their responsibilities. He also recommended codification of Islamic law, following the example of Ottoman legal practice.\(^84\)

**Islamic Courts and Judges as seen in Muslim Periodicals (1915-1918)**

The petitions [*zhaloby*] to the Russian authorities contesting sentences issued by qâdis represent one of the phenomena that best reflect the tsarist administration’s

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\(^79\) Palen, 1910a; *idem*, 1910b.

\(^80\) Bartol’d, 1963, p. 387.

\(^81\) On the codification of Islamic law and the subsequent production of manuals on this subject in British India, see Anderson, 1993, pp. 214-215.

\(^82\) Palen, 1910a, p. 11.

\(^83\) Cvetkov, 1911.

\(^84\) Lykoshin, 1916, pp. 97-98.
influence over legal matters in Turkestan. Crews argues that to satisfy the petitions sent to them by the native inhabitants of Tashkent, officials in the Russian administration became arbiters in disputes between Muslims, and came to play an essential role in the day-to-day practice of Islamic law. This interpretation correctly emphasizes the extent to which the condition of legal pluralism influenced legal practice among Turkestani Muslims. Considering the fact that it was Muslims themselves who condemned the qâdis’ discretionary powers, it is natural to wonder what repercussions this pluralism had in the field of Islamic jurisprudence.

We will attempt to provide an overview of what occurred, substantiating our conclusions with the opinions expressed by Muslim jurists on Islamic courts, as cited in the magazine *al-Iślâh* (1915-1918). As was previously pointed out, this magazine was almost exclusively devoted to the discussion and resolution of legal questions. This in itself suggests that it was founded to offer expertise to jurists, as the official Islamic legal system was said to be corrupt and people no longer trusted it to fulfil this duty. In support of our hypothesis, consider that in the magazine’s statement of aims, the editor in chief explained the reason for publishing *al-Iślâh* in the light of the need to re-establish the good name of Turkestan’s Muslim legal experts.

In practice, the periodical’s editorial board served as a group of consultants, stimulating discussion on how questions should be seen in terms of Islamic jurisprudence. Queries [*su’āl, istiftā’*] were sent to them from all the big cities in Central Asia. After being evaluated by a staff committee, only some of them were published. When a letter was selected to appear in the magazine, an answer [*jawāb, riwāyat, fatwā*] and discussions on the topic accompanied it. Many of the questions submitted to the *al-Iślâh* board were related to the economic transformations introduced by the Russians. For example, Muslim scholars questioned whether it was right to wear silk garments, as the new cotton merchants in Ferghana had begun to do. They exchanged opinions on the legitimacy of banking operations and whether it was permissible

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85 Crews, 2006, p. 287.
86 Khâl Muḥammad Tūra Qulî, 1918.
87 Anonymous, 1915a, pp. 5-6.
88 The editorial board normally refused to publish and pronounce on abstruse questions that could easily have provided a pretext for accusations of infidelity (*takfîr*); Anonymous, 1915b.
89 Ahmad Khwâja, 1915; S.‘., 1915; Muftī-zâda, 1915.
to do business with Russians on trains on which alcoholic beverages\textsuperscript{91} and pork\textsuperscript{92} were sold. Questions related to pork obsessed many people in Turkestan. A correspondent in Bishkek\textsuperscript{93} asked whether it could be considered permissible to take money earned from renting a scale for weighing pork or from the Kirghiz-owned pig farms often found in villages where Russians lived.\textsuperscript{94}

Such questions elicited jurisprudential opinions that were far from banal. It should in fact be noted, on one hand, that it was precisely these questions that prompted discussion between \textit{al-Islāḥ} jurists on the possibility of making use of independent reasoning \textit{[ijtihād]}\textsuperscript{95}. For example, one reader interested in the questions raised about the easy money to be made doing business with Russians, suggested that the jurists should turn to \textit{ijtihād} for the sake of the economic advantages to be had from pork and champagne served on the Russian trains.

The basis for the questions listed above was a general interest in the status of the Islamic courts and the work they did. In fact \textit{al-Islāḥ}’s editorial board placed an announcement in the paper inviting correspondence related to these topics.\textsuperscript{96} Those interested in such questions were usually explicitly critical of local jurists. In fact, alluding to cases of blatant incompetence, the magazine’s editors consulted its readership and went on to publish the following list of “urgent questions” \textit{[darūri su’āllār]} in four separate issues:

1. “Is it perhaps in keeping with the \textit{sharī‘a} that a person who is said to be a learned man and a leader \textit{[divilmiş ‘ālim wa pishwā]} should give a careless answer to someone who asks whether something is lawful or illicit \textit{[halāl wa harāmlık]}?"

2. What does the noble law \textit{[shar‘-i sharif]} decree if a learned person, to whom one has turned to learn whether or not a certain thing is permissible,

\textsuperscript{91} On the question of alcoholic beverages, see the following: İdāra, 1915b, a request for authoritative opinions regarding the diversification of alcoholic beverages and whether their use could be considered lawful. The question came up again in subsequent issues, \textit{cf. al-Islāh}, no 14, 1 August, pp. 421-422; \textit{al-Islāh}, no 15, 15 August, pp. 451-453.

\textsuperscript{92} Akhtamuf, 1915.

\textsuperscript{93} Anonymous, 1916a.

\textsuperscript{94} These questions call to mind the discussions on whether it was lawful to eat Russian dishes \textit{[dar bayān-i hīl wa hurmāt-i ta‘ām-i ahl-i kitāb]} in a text compiled before 1905 by a Tashkent ‘ālim (b. 1830), who had emigrated to India after the Russian conquest and subsequently returned to Turkestan (Kokand) in 1880, \textit{cf.} Muhammad Yünus Khwāja, born Muhammad Amin-Khwāja (Tā‘īyb), 2002, pp. 5-7. For some recent views on this work, see Babadzhanov, 2004, pp. 76-78.

\textsuperscript{95} Akhtamuf, 1915.

\textsuperscript{96} İdāra, 1915c.
[...] turns away or, if the question has been presented in writing, throws it on the ground?

3. Is it just that a learned person does not reply to a question only because one does not have money to offer him [birār sūm nadrānasī yūq uchūn]?

4. What does the shari‘a decree if a person who is said to be learned does not respond to questions posed to him because he is ailing?

5. Is it perhaps just that a person, although incapable of resolving legal problems [shar‘i mushkilātārin ḥalīgha iqtidārī yūq kishi] and satisfying Muslims’ religious requirements, should formally be considered a leader, a guide and a representative of the Prophet [pishwā wa muqtadā wa nā‘ib-i rasūl]?

6. Is it perhaps just that such a person, through deception in front of people, should enjoy a reputation as a learned man, a leader, a guide and a representative of the Prophet and actually become a chief and occupy the post of honour in our assemblies?" 97

Perhaps of all the criticism directed against jurists, the muftīs’ role in court proceedings merits particular attention. In Central Asia the muftīs made up an integral part of the Islamic judiciary system. Courts were usually situated in judges’ homes (the reason they were called qādī-khāna) and composed of two rooms. In Bukhara, for example, the judges and their scribes worked in one, while the other was reserved for the muftī [muftī-khāna] or his secretary [muharrir], called upon to draw up notarised deeds [mahḍar wa wathīqa], complaints or legal opinions [fatwā, riwāyat], whenever one was needed by a judge in order to issue a sentence on a given case,98 or when someone requested an authoritative opinion on a given question.99

Colonial legislation on the Islamic courts had significantly upset the relationship between Muslim judges and legal experts. That the result of elections to the judiciary could be determined through bribery100 and that those elected could remain in office for more than one three-year term, and could do so while

97 Idāra, 1915a. The question came up again in subsequent issues, cf. al-Iṣlāh, 1 August 1915, n° 14, p. 422; al-Iṣlāh, 1 September 1915, n° 16, pp. 484-485.
98 Cf. Jusupov, 1941, II. 19-30. Lykoshin (1916, p. 80) describes Islamic courts in Tashkent as having two rooms: one for qādīs and muftīs, the other for scribes.
99 Baqirov, 1967, p. 13. Considering this situation, it can be inferred that the functioning of the Muslim judiciary in Central Asia was, in many ways, similar to the Islamic legal systems in use elsewhere in the premodern Muslim world, as for example in Merinid Morocco or in the core regions of the Ottoman Empire, cf. Tucker, 1998, p. 20; Gerber, 1999, p. 57; Powers, 2002, pp. 20-21.
100 Nāsi‘, 1918.
enjoying immunity, in spite of the discretional nature of their actions, seems to have allowed the qādis to become totally independent from the muftīs and the a’lam. These reasons, according to Dobrosmyslov, were the basis of the growing partiality of the qādis:

“as they were held in check neither by the muftīs nor by the a’lam, they began to consult the indications in the sharī’as less and less, preferring their own opinions and their personal interests to the sharī’a […]”

The judges’ and the legal experts’ autonomy seems to have become a relevant phenomenon in Turkestan starting with Russian domination. A petition addressed to Palen on behalf of the shaykhs, erudite Muslims and the inhabitants of the uezd of Amu Darya indicates that in some cases the qādis refused to allow muftīs into the courts while a case was being heard.

But how had the qādis managed to gain this power over the jurists? As has already been pointed out, the Russians significantly changed the system of making appointments to these posts. Not only did they put the consultative assemblies composed of the representatives of fifty families [illikbāshi] in charge of elections, but they also delegated to the qādis themselves the choice of the legal experts that would work alongside them in court. This left the Muslims indignant, to the point that it became a topic of discussion in al-Iślāḥ. A question was raised in 1916 by a mullah in Khujand who warned readers that the authority to issue a fatwā depended on being able to obtain a license [ijāzat].

“What does the sharī’a decree if some insipid men [‘ilmsiz], incapable of reading Arabic, exclusively on the basis of a license from a qādī, have the effrontery to issue a fatwā? Is it perhaps lawful that the qādis should issue permission to such people? And if the fatwās [issued] by such muftīs are lawful, are they significant?”

Asked by al-Iślāḥ’s editors to answer the letter, ‘Īsā-Khān A’lam, an influential jurist in Tashkent, wrote:

101 Baqirov (1967, p. 14) points out that the administrative system of the Khanate of Kokand contemplated the implementation of a complex system of control of the courts’ actions, a system which was, instead, abandoned in the tsarist period, allowing the qādis to do very much as they saw fit.

102 Dobrosmyslov, 1911, p. 108.

103 RGIA, f. 1369, op. 1, d. 264, ll. 213-213ob, available at http://zerrspiegel.orentphil.uni-halle.de/t908.html

104 CGA RUz, f. I-1, op. 22, d. 115, available at http://zerrspiegel.orentphil.uni-halle.de/521.html

105 It is perhaps worth recalling that in legal literature the obtaining of a formal ijāzat to issue fatwās is usually considered desirable, not obligatory; cf. Hallaq, 1994, p. 59. On the authorizations to issue legal opinions see in general Makdisi, 1981, pp.147-151.

“In the work Durr al-Mukhtār,107 from the commentary of ‘Allāmah Shaykh Qāsim we learn […] that there is no difference between muftīs and qādis; the only difference may be that the former provide information about the commands [of the law] while the latter must see that the law is enforced. […] Muftīs’ learning [‘ilm] must be greater than that of qādis’ because in a case in which one of the latter were to be insipient, he could issue a sentence only through recourse to the learning of a muftī. […] From the [work] Qādīkhān108 we learn that […] any individual who serves as a muftī should have spent some time in the service of a trustworthy man of erudition [‘ālim-i thiqa] and have learnt the method for issuing a fatwā. This is because he cannot show himself to be incompetent nor can he commit errors when he issues his authoritative opinions. Given these premises, it is to be inferred that the qādī cannot interfere with the office of the muftī and in issuing fatwās, unless there is a permit in effect issued by the qādī and the governor [hakim] according to which the duties in the muftī’s competence should be shared between some qādis; but this would be to the detriment of Muslims’ rights.”109

The supremacy of the qādis over the muftīs in Tashkent increased steadily until August 1917, when a special commission was set up to issue fatwās at the initiative of the Society of the ‘ulamā’.110 To accomplish this with authorization from “those who have the authority by appointment” [man lahu wilāyatū ‘l-naṣb] – clearly a euphemism for referring to the judges – the members of this Society convoked an assembly for all those serving as muftīs and a‘lam in the city. The assembly was chaired by the jurist ‘Īsā-Khān A‘lam, who wrote the opinion cited on the previous page and since then had become a representative of the Society of the ‘ulamā’.111 In clear contradiction with what he had written for al-‘Islām only one year before, on this occasion ‘Īsā-Khān A‘lam decided that the members of the above-mentioned commission would be delegated the authority [wilāyat] necessary for issuing a fatwā if appointed to office and authorized by a judge.112 In this way, conferment of the office of muftī would officially depend on a license [ijāzat] issued by the qādis.

107 A compendium of Islamic jurisprudence (fiqh) of the Hanafite doctrine, compiled by ‘Alā’ Din Haskafī (d. 1677).
108 Fatwā Qādī Khān, a collection of fatwās whose author is Fakhr al-Dīn al-Hasan b. Mansūr Üzjandī (d. 1196).
110 Khalid, 1996; Sartori, 2006.
111 Idāra, 1917a.
112 Idāra, 1917b. For additional information about the assembly, see Sartori, 2006, pp. 117-119.
Some Concluding Remarks

The policies concerning the Islamic courts adopted in Turkestan by von Kaufman and – following in his footsteps – most of the governors who came after him, before the uprising in Andijan, were clearly consonant with their general attitude of “disregard” [ignorirovanie] for Islam. While in many sectors of public life, such policies left the management of Islamic institutions directly to Muslims, the courts instead, and especially judgeships, were regulated by legislative frameworks devised by the Russian administration for administering the Turkestan region, i.e. the Provisional Statute of 1867 for administering the provinces of Semirech’e and Syr Darya and the Statute of 1886 for administering Turkestan. Naturally, in the spirit of ignorirovanie, the Islamic courts were allowed to continue to make judgements in accordance with the shari’a. Yet the application of a legislative framework of this sort was not without consequences. Laws were introduced that had been specifically conceived to severely limit the courts’ sphere of competence and significantly reduced the judges’ capacity to hear criminal cases and inflict penalties. Muslims were also granted the right to appeal to Russian courts if they were dissatisfied with a sentence issued by a qādi. By enforcing this provision, the colonial administration turned imperial law into a legal authority that was an alternative to Islamic law. Moreover, there was consequently an increase in the number of petitions addressed to the Russian authorities in which Muslims contested the decision of the Islamic courts.

Other provisions conceived by the Russians to “bring order” to the Islamic courts had the opposite effect. The measures that required qādis to be elected to office and those which established the territorialization of the courts’ jurisdiction increased the qādis’ power and decreased that of the muftis. In addition, the former were granted the right to appoint the latter. It is likely that it was putting such provisions into effect that led to the corruption and discretionary powers that Muslim publications and Russian observers at the time described as characterizing the qādis’ actions in Turkestan in the early twentieth century.

After the 1898 uprising led by Dukchi Ishan [Dūkhī Īshān], the colonial administration generally abandoned its policy of ignorirovanie, which came to be seen as overly permissive, and promoted a policy of monitoring the courts. This change in attitude was manifested in the same year the uprising took place in their producing the Provisional Statute for People’s Courts, promoted by Governor-General Dukhovskoj and conceived to improve the legislative framework described above. The Provisional Statute was never approved but the
new attitude to Islamic institutions meant that Russian officials kept a much closer watch on the activities of the local courts and intervened, when necessary, in the more restricted sphere of legal procedure. In doing so, the colonial administrators became aware that they needed to understand the principles and functioning of Islamic jurisprudence. From that moment on, there were a series of attempts to codify Islamic law. Most of them aimed at drawing up “codes” that the officials responsible for monitoring the courts could use to verify whether the courts and the assemblies of qādis were in fact judging cases “in accordance with the shari’a” and not on the basis of personal discretion. These measures, however, were not put into effect soon enough. The colonial administration had completely ignored Islamic jurisprudence for many years, not profiting from the store of experience and “Orientalist” knowledge relevant to the problem, acquired in the Empire’s other governorships in which the majority of the inhabitants were Muslims.

Abbreviations

CGA RUz  Central’nyj vosudarstvennyj arkhiv respubliki Uzbekistan / O’zbek Respublikasi Markaziy Davlat Arxivi [Central State Archives of the Republic of Uzbekistan, Tashkent]
RMIKIU  Respublikanskij muzej istorii, kul’tury i iskusstva Uzbekistana [Archive of the Museum of History, Culture, and Art of Uzbekistan, Samarkand]
RGIA  Rossijskij vosudarstvennyj istoricheskij arkhiv [Russian Central Historical Archive, Moscow]

Archives

CGA RUz  fond I-1, Kancel’arija turkestankogo general-gubernatora [Office of the Governor-General of Turkestan].
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