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Введение.
Караханиды и Абу-л-Хайры:
Границы правильных убеждений и
практики в государственном
устройстве.
Юридические труды в
формировании легалистского
дискурса в досоветской Евразии.
Краткий обзор юридических трудов
в двух академических фондах.
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Второй этап формирования исламского права в Мавераннахре периода
предмодерна: свидетельство рукописей

Аннотация. Крах Тимуридской империи привел в действие сложные механизмы политической реорганизации Евразии и стимулировал появление новых политических образований. Кочевая династия Абу-л хайридов Шибанидов (906/1007–1500/99), хотя и мощная, но все же маргинальная страта, захватив власть в Мавераннахре, также, как ранее династия Караханидов (381/606–991/1209) стремилась укрепить свое влияние и правление. Обе династии делали ставку на суннитскую ортодоксию, что укрепляло базис социального развития. Борьба на внешнем контуре с ши'измом, ставшим государственной идеологией Ирана, требовала подтверждения их легитимности как «ал-фирка ан-наджиййа». В управлении государством они нуждались в сильной правовой базе. Доминировавшая в регионе интерпретирующее сообщество, улама и факихи, приступили к переосмыслению исламского правового наследия.

Выявляя рукописи правовых сочинений в академических фондах Таджикистана и Узбекистана, автор пытается представить тот корпус сочинений, которые помогли бы более точно воссоздать политико-правовую сферу ханства Абу л-хайридов в эпоху, признанную вторым этапом формирования исламского права в Евразии периода пред-модерна.

Ключевые слова: конфессионализация, «суннитский пояс», фикх, фетва, шарх.

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Qarakhanids and Abu'l-khayrids:
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Legal Writings in Shaping the Legalist
Discourse in Premodern Eurasia
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The Second Stage in the Formation of Islamic Law in Pre-Modern Transoxiana: Evidence of Manuscripts³

Annotation The collapse of the Timurid empire set in motion the complex mechanisms of the political reorganization of Eurasia and led to the emergence of new political formations. The nomadic dynasty, Shibanids Abu'l-khayrids (906–1007/1500–99), having established their power in Maverannahr, though powerful, but still a marginal stratum, as the Qarakhanids (381/606–991/1209), sought to reinforce their influence and authority. Both dynasties staked their claim on Sunni orthodoxy, which unified the basis of societal development. The struggle on the external contour against Shi'ism, which became the state ideology of Iran, required a reaffirmation of their legitimacy as an “al-firqa al-nājiyya”. In their state management, they needed a strong legal base. The region's dominant Hanafi interpretative community, ulama, and faqihs launched a process of rethinking the Islamic legal heritage.

By identifying manuscripts of legal works in research holdings of Tajikistan and Uzbekistan, the author attempts to outline the corpus of writings that could help more accurately recreate the political-legal sphere of the Abu'l-khayrids khanate in the era considered as the second stage in the formation of Islamic law in pre-modern Eurasia.

Keywords: confessionalization, “Sunni belt”, fiqh, fatwa, sharh.

Introduction

The break-up of the Timurid Empire (370–06/1370–1507)⁴ is considered to be the time that set in motion complex political mechanisms, the next stage in the political reorganization of Eurasia. As a result, the nomadic Shibanid dynasty of the Abu'l-khayrid branch (906–1007/1500–99) established its rule in Transoxiana.

The additional challenge at this historical moment was the promulgation of Shi'ism as an ideological platform of the newly established Safavid empire (902/1502–1148/1736) in Iran. In response to this political act of the Safavids, so-called “Sunni belt” was formed in Eurasia, the active actors of which were the Ottoman sultanate-caliphate and the Moghul Empire; the Shibanid Abu'l-khayrid khanate of Transoxiana was its third party. The ruling elite of each polity sought to develop and implement their own political and ideological

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⁴ Samarqand fell in 911/1505, Herat – in 913/1507.

programs as a response to this challenge. The tasks of state-building, as well as the desire to prove the correctness of their orthodoxy and orthopraxy in the struggle for the Supreme Truth, naturally led to the intensive development of the legal sphere in each of the polities on both sides of an evolving ideological barricade and to intensifying a legalistic discourse in Sunni and Shi'ite culture.

The issues of the peculiarities of the legal development of the Ottoman, Moghul, and Safavid empires have become the focus of numerous publications in the last decade. Turning to the khanate, it should be noted that, despite unconditional advances in its study achieved in recent times, these problems remain practically unstudied up to the present.

The present work has a modest goal – to outline the corpus of manuscripts that could become a basis for developing a more nuanced understanding of the legal-political sphere of the Abu'l-khayrids khanate. Familiarity with this corpus of writings would widen the horizon of our understanding of the historical context in which they were produced, read, re-produced, and circulated.

Qarakhanids and Abu'l-khayrids:

Boundaries of Correct Belief and Practice in State Building

After the victorious military actions of Muhammad Shibani Khan (c. 905/1500–916/1510) in Khorasan, his name was pronounced in khutba in the Friday mosque of Herat with the title “Imam-al-zaman wa khalifat al-rahman” (“Leader of the century and viceroy of the merciful”), fixed in his coins [3]. The khan’s plan, “according to which he would soon rule lands as remote as Syria and Egypt” [67, 100], showed his ambitious claims to both spiritual and temporal supremacy [30; 25, 129, 155–156; 62, 60–63, 66–67]. Muhammad Shibani’s rhetoric reveals him to be a warrior-king proud of his Chingisid origins, ready for vast conquests and great accomplishments within the state on the base of shari’a [44]. An indisputable indicator of the legitimation of Abu'l-khayrids power as a continuation of the traditions of the Rashidun Caliphate is, amongst others, the mention of the names of Abu Bakr, Uthman, and Ali in the most important manifestation of khan’s power – coin minting [3].

Thus, it is clear that the dynasts did their best to present the khanate as a certain ideal political entity, fully corresponding to the Iranian-Islamic model. The results of the study of the body of various types of sources, including numismatic ones, refute this benign picture.

Thus, according to R. McChesney [55, 48-49, 78], the prevalence of the socio-economic norms of the Chinggisids, “prevented the creation of the bureaucratized empire of the Iranian-Islamic type”, and one of the most significant features of such a situation was the absence of “the administrative machinery of the imperial fiscal”. This was in line with the steppe traditions with the absence of common resource base for the entire polity. “The sultan who would be elected as a khan would remain in the capital of his appanage which was his powerbase” [29]. Such decentralization of resources had a detrimental effect and prevented a proper development of socio-political and economic spheres. According to M. Dickson, such an entity can be considered as a “confederation or cluster of independent appanages united by neo-eponymous ties [or] as a neo-eponymous grouping of appanage states” [68, 110, f. 154]. A constant increase in the number of potential owners and a growing load on available resources led to fierce competition, unleashing inter- and intra-clan struggles. Only Abu'l-khayrids’ military campaigns on the outer contours of the polity, bringing the possibility of the distribution of spoils, stopped this process of political fragmentation for some time.

The same conclusion was reached later by A. Wilde, who admitted: “In fact, the successors of Muhammed Shibani Khan had established clan rule rather than the true

dynastic rule. Following the practice rooted in the worldview of the steppe society, the newly conquered space was divided and given over to male members of the royal clan who belonged to four different lines” [68, 110].

According to Yu. Bregel, in terms of the scale of Shibands conquest, the number of nomadic masses involved and the duration of the impact of this wave of nomadisation on the development of Central Asia substantially exceeded the Mongol conquest. In addition, while some of the tribes and peoples involved in the Mongol conquests withdrew back to Mongolia, this did not happen after Shibani Khan’s conquests. The huge masses of nomadic peoples who came in on this wave stayed and established themselves in conquered territories, displacing the peoples who had lived there [32, 11–12].

According to sources, Samarqand was completely depopulated until the 13th/19th c. It was never able to reach the level of pre-Mongol development, and only two inhabited quarters remained in Bukhara. In terms of its level of development, Tashkent at the end of the 10th/16th centuries was thrown far back from the indicators of its development at the turn of the 9th/15th–10th/16th c. [30, 518].

A financial reform was a major step of Muhammad Shibani to overcome the economic crisis and develop measures to restore the economy. The monetary reform was announced following the act of proclaiming his name as the new ruler in the mentioned khutba of 913/1507, this “testifies to the political importance attached to this economic act” [4, 131]. Due to its implementation, “the population finally received a solid and stable monetary unit for retail trade” [35, 415]; these measures significantly replenished the state treasury. At the same time, there took place a “redistribution (sometimes violent) of most property in favor of the Shibaniids and their inner circle” [25, 75]. The policy of subsequent dynasts was also aimed at the centralization of the khanate, but even Abdullah Khan II, who is considered the most successful in this activity, was not able to overcome the separatist tendencies but rather succeeded to restrain them to a certain extent.

Having come to power, Shibani Khan faced tremendous problems, first and foremost, in the key sphere of the economy – agriculture. The destruction of cultivated areas and irrigation structures was compounded by the death of most of the farmers and the flight of the remaining owners and peasants able to exploit these territories rationally. The sources also testify to numerous cases of repeated destruction and looting in the same territory, as well as to attempts by nomads to create pastures for grazing on the ruined area [10].

As the sources note, initially Shibani Khan did not exclude the possibility of introducing a dual legislative system of *yasa* and *shari’* into everyday practice. However, it was risky to introduce such an innovation in a region with such a strong Sunni Hanafi legal tradition without negotiations with the *ulama*.

According to Ruzbehan, Shibani Khan held consultations on this issue in 914/1508 and 915/1509 on the catastrophic situation in the agrarian sphere [43, 94] in Samarqand with a group of the most experienced lawyers. The ruler put the key issue of the discussion about the possibility of putting into circulation the lands that were kept without their owners by inviting other people to own them to restart their cultivation [50, 55]. The main solution was to make an inventory of all the lands, find out the names of the owners and, if possible, return their property to them; as “for the runaway peasants, they were to be forcibly confined to certain lands... In the course of the discussion, it was decided to give the lands whose owners had not shown themselves to the Padishah – Sheibani Khan” [9, 1966]. Realizing the futility of his intention to use the twofold type of juridical norms (Mongol

and Islamic ones), Shibani Khan confirmed the implementation of shari'a norms in the space that was under his rule [38, 68; 43, 94].

A retrospective view of the situation in the Abu'l-khayrid khanate reveals its striking similarity with the sociopolitical conditions of the establishment of the Qarakhanid dynasty's (381–606/991–1209) power in Transoxiana. These dynasties established themselves in the region during the first (Qarakhanids) and last (Shibanids) avalanche waves of nomadic invasions, replacing the pre-existing state of the Irano-Islamic model and introducing the type of nomadic socio-economic management within the framework of the established Muslim sociopolitical and economic traditions.

Researchers believe that the Qarakhanid khaganate remained "...in fact, a confederation of separate possessions of the representatives of the ruling clan, who enjoyed a rather extensive set of powers and authorities... with the decentralized functioning of individual appanage khanates competing for supreme power", i. e. the numismatic material records the period 405–408 /1014–1017 as the "tri-kingdom", the simultaneous rule of three khans [7, 83]. It was very difficult to maintain a balance of interests and ambitions of numerous actors on the political scene, so the history of the Abu'l-khayrids was marked by a period of acutest turbulence, "a civil war" of 957–990/1550–582 [53].

Both the Qarakhanids and the Shibanids, who came to the region 500 years later as a new nomadic power elite, though powerful, but still a marginal stratum, in both cases had the desire not only to seize but also to enroot their power. Thus, they need to legitimize it. On the one hand, it was to be done in the light of Islamic juridical-political theory and practice in order to attract to their side the Muslim ulama and faqihs as inheritors of Muhammed's prophecy, custodians of Knowledge. On the other hand, it was necessary to maintain solidarity with the nomadic army – the backbone of the power, following the political notions developed in the bowels of nomadic culture.

By the 4th/10th c., like by the 10th/16th c., the religious situation in the territory of Transoxiana and Khorasan was rather heterogeneous, with the representation of various sects, madhabs, and branches of Islam.⁵ Its largest cities – Bukhara, Samarqand, Herat – rightly gained fame as the most important centers of Muslim theology and law, as well as of the written tradition in Dar ul-Islam.

Intellectual pluralism could only complicate the situation for newcomers, already under virtually continual attack from inside and outside forces⁶. Even the "first line of support", which the nomadic army was considered to be, was highly unreliable. The presence of nomadic clans – essentially well-equipped and trained paramilitary groups – with their ideas of qazaqliq [49]⁷ and egalitarianism against the background of pluralism in the interpretation of sacred and sociopolitical concepts within the polity could be extremely dangerous and risky and force the nomadic elites to "hold a circular defense".

⁵ Analysing the religious situation in Samanid dawla, S. M. Prozorov [14, 377] introduced the concept of "limited religious pluralism". Nazhmiddinov pointed out that the al-Marghinānī's fatwa fixed the complex intersectarian struggle of such refuted groups as the najjārīya, the mujassima, the qadarīya, the mujabbira, the rawāfīd, the followers of Ma'mar, and the karrāmīya. The same information was revealed in the *Talkhīṣ al-adilla* of aṣ-Ṣaffār al-Bukhārī (d. 534/1139) [59, 13 ff.].

⁶ The writings about Muhammad Shibani show him as a strong Sunni adherer shocked by the dominance of the Shi'a ideas and social norms on the former Timurid lands who could not tolerate such religious pluralism [15, 67 ff.].

⁷ Qazaqliq was a custom of political vagabondage that played an important role in state and identity formation in post-Mongol Central Eurasia.

“The Turkic khans, who were very inferior to the Samanids according to their cultural level, looked upon the local ulama and faqihs with far greater deference⁸ than the previous rulers, who allowed them into their midst but did not obey them” [2, 18]. The rulers needed to unite the society in a confessional sense,⁹ and they staked on the dominant Hanafi madhab. The rulers took tough measures to eradicate religious dissent, up to and including the physical destruction of their leaders, significantly reducing the representation of Sufism, Shi’ism, and Ismailism in the territory under their control.

However, history shows that both the Qarakhanids and Abu’l-khayrids needed not so much orthodoxy as such, but completely loyal religious leaders from the chosen confession, creators of communal opinion on correct belief and practice necessary during state building. To partially replace the large spiritual aristocracy of the former states with a new religious elite, the dynasts did not even hesitate to physically execute unwanted ulama. In such cases, “a sober political calculation played a decisive role” [2, 18]. This was the case during the reign of the Qarakhanid Tamgach Khan Ibrahim b. Nasr (c. 431/1040–461/1069), who for his ostentatious piety was recognized in Muslim sources as a just and pious ruler [28], and when Muhammad Shibani, preserving the overall influence of the Naqshbandi tariqa, removed its stropky Samarqand Naqshbandi sheikhs and brought the Juybarid clan closer to the throne [25]. As a result of such actions, Bukhara became a capital of a big polity for the second time in its long history [62, 75, 84–87].

A newly formed religious elite were well aware of to whom they owed their ascendancy [1]. The extraordinary elevation of the socio-political status of the ulama, the granting of tax immunity to them, and the distribution of land and other property in the form of waqf brought forth the dynasties of religious figures who played a significant role in the development of the region but increased the decentralization of the polity as well.

These were the Sadr of Bukhara and the Jubarids sheikhs (5th/11th and 10th/16th c., respectively), whose genealogies for many centuries were invariably associated with the key figures of the “golden age” of Islam in Transoxiana [61]. The transition of the Qarahanids territories in 536/1141 under the control of the pragmatic Qarakhitays gave the impulse to the continuing disintegration of the Qarakhanid khaganate and the downgrading of the dynasty’s status to vassals of a non-Muslim dynasty. The role of the religious elite under such circumstances increased even more, and the Sadr dynasty was given virtually all the reins of Bukhara by the Qarakhytais, up to the collection of tribute. Thereby the

⁸ Since the Qarakhanids factually left no written sources, the texts on the Ghaznevids give us information about some practices certainly common to both dynasties. That is the tradition of appealing to ulama and faqihs on evolving legal problems. Of great interest in this sense is the manuscript *Majmu‘ sultani* (*Compendium [dedicated to] the Sultan*) known in two Uzbekistan copies. This is a guide in the form of questions and answers compiled by ulama, dedicated to Mahmud Ghaznevi (388–421/998–1030). Copied in 1101/1690 and 1168/1754, they are late editions of the work but contain an older part with materials from earlier works: *Kafi fi furu' al-Hanafiyya* by Muhammad al-Hanafi (d. 234/848), *Kafi fi furu' al-Shafi'iya* by Abu 'Abdallah az-Zubair al-Zubayri (d. 317/929), *Kafi* by Muhammad al-Hakim (d. 334/945), *Zahirat fi usul al-fiqh* by Ahmad b. Husayn (d. 350/961) and those from the later period: *Hidaya* by Burhan al-Din al-Marginani (d. 593/1196–1197), *Khulasa* by Tahir al-Bukhari (d. 542/1147), *Muhit* by Razi al-Din al-Sirahsi (d. 544/1149), *Faraiz al-Sirajiyya* Siraj al-Din Muhammad al-Sijawandi (d. 600/1203), etc.

⁹ That epoch showed other measures also taken to form a unified religious-legal platform for state management. The actions of caliph al-Qadir bi Allah (c. 381–422/991–1031), aimed at destroying dissent and legitimizing “orthodoxy”, the lamentably famous “al-I’tikad al-Qadiri” (“Qadirite creed”) are among the most crucial [48; 41, 70ff.]

Qarakhitays created alternative centers of power that strengthened the fragmentation of the Qarakhanids' possessions [27, 124].

Political and social transformation as well as the emergence of new ethnic elements, changed the social landscape of the state and required answers to quite complex questions on the base of Islamic law¹⁰. The ulama and the faqihs were aware of their responsibility to prevent further destructive social shocks and stimulated the development of legal knowledge both at the theoretical level and in practical implementation.

One of the problems was the “weak faith” of the newcomer nomads. The evidence from the sources testifies to the strong preservation of patriarchal ideas in the minds of nomadic peoples, both in the Qarakhanids and Abu'l-khayrids periods¹¹. In everyday practice, pre-Islamic beliefs and customs dominated among them, primarily those related to the mode of economic management, fixed by a thousand-year tradition in which, for example, slavery existed as a pattern that will affect social reality later¹². Conversion to Islam in this case expressed loyalty to the Muslim community/tribe rather than the faith itself with genuine religious feelings, or the existence of a religious worldview [33, 4].

This stimulated an intensive development of the legal tradition. The Hanafi intellectuals took on the role of mentoring new members of the umma, teaching them in madrasa and dar ul-hadith, whose number was steadily increasing. New “Qur’anic generations” were already emerging among recent converts, and new Hanafi schools were formed in the eastern part of the region. Many neophytes were successfully integrated into the local Islamic culture and could play a significant role in creating new empires in the future [11]. The combination of social and political principles elaborated by the legalists

¹⁰ The fatwa of the Samarqand faqih, Nasir ad-Din Muhammad as-Samarqandi (d. 556/1161) conveys the concern of the local “old” Muslims about what was going on: “The territories that are in the hands of infidels are certainly Muslim territories, not territories of war because the laws of infidels do not apply in them, but rather the qadi are Muslims; the rulers who submit to them (infidels) by compulsion are also Muslims. In a city where the governor is a Muslim, its inhabitants are allowed to perform Friday prayers, celebrate holidays, collect taxes, and follow (the regulations) of the qadi because he is under the rule of a Muslim, and submission to infidels is the visibility of fear and deception, but in areas where governors are infidels, Muslims must perform Friday prayers, celebrate holidays and strive for (the appointment) of a Muslim governor for them” [13, 149–150]. The answers to the same question recorded in *Majmu' al-Fatawa* indicate that community saw the situation as a serious internal threat to social cohesion [59, 13].

¹¹ Despite the rejection (especially in Maturidism) of Abu Hanifa’s initial view of the possibility to imitate faith, the idea of conversion to Islam as following the religious conviction of an authoritarian man (“an endorsement of the faith of a muqallid”) [47, 160], did not lose its influence. The Hanafi madhhab certainly not without the influence of Murjiite ideas, considered the external recognition of faith (acknowledgment of Allah’s truth) to be sufficient for a Muslim, putting the question of knowledge of ritual duties and doctrinal issues on the back burner. This principle “gave people who had been forced to change the religion of their ancestors and were not sufficiently familiar with the norms of the new religion the possibility to possess the full status of a Muslim, ignoring, however, his duties” [11, 39].

¹² Already at the first stage of Muhammad Shibani's struggle for Khorasan, before the death of Sultan Husayn Baykara in 911/1506, the Sunni ulama of Samarqand and Herat adopted a fatwa that did not recognize Shi'ism as a true faith, and relegated Khorasan to the category of “Dar ul-harb”. Marriages with Shi'ites were relegated to the category of makruh (forbidden) [49, 132], and the sale of Shi'ites into slavery was allowed [8, 142]. The fact that the enslavement of Muslims by Muslims became the norm vividly shows that Mongol political-legal perceptions took precedence over shari'a norm. Such “legalized violence” unleashed the hands of nomad warriors and led to the flow of slaves forcibly taken from Khorasan, who ended up in large numbers in the cities of the khanates, in particular in Khorazm, which turned into the largest slave market in the region [31].

by then certainly had a great impact on the formation of the society under the conditions of changes in its quantitative and qualitative composition. On the other hand, these challenges turned into a powerful impetus for the development of the schools themselves, putting them in a position to meet new challenges.

The Qarakhanid period shows an impressive development of the written Hanafi tradition and a great number of intellectuals dealing with legal issues. The sources fixed biographies of 133 actively working faqihs. This gives ground to assume that this period, in terms of the number of faqihs, thrice exceeds each of the previous (Samanid) and the subsequent (post-Mongol) periods [13]¹³.

Therefore, “Long before the Mongol invasions, political and social turmoil in Transoxiana motivated Maturidiī Hanafi jurists to articulate legal arguments in defense of state interests. This process went hand-in-hand with the promotion of strong Sunni political leadership and community in the territories of the western Qarakhanid khaganate. This intellectual and political relationship between jurists and the state also shaped the development of the great Hanafi jurists of Transoxania, such as Abu Bakr Muḥammad b. Abi Sahl al-Sarakhsi (d. 483/1090), Qaḍikhan Uzcendi (d. 1189), and Burhan al-Din Abu al-Ḥasan al-Farghani al- Marghinani (d. 593/1197)” [24, 12–3].

By the time of the Mongol invasion, Transoxiana “formed a distinct intellectual space” with “a relatively self-contained intellectual tradition” [64, 43] a kind of model for addressing key issues of existence, particularly in the field of legal norms regulating the administrative and institutional practices of the state.

The law, actualized in the doctrinal provisions of the Hanafi madhhab, in the Qarakhanid time, became one of the bases of power of the Abu'l-khayrids. The challenges faced by both polities were similar: powerful migration processes, a fierce struggle for the formation of new centers of power, forcible division of land holdings, etc. But there were also new challenges, which required the search for new legal approaches. Foremost, there was the need to prove, amidst the struggle between the two orthodoxies, that their community was al-firqa al-najdiyya that was destined for salvation.

Legal Writings in Shaping the Legalist Discourse in Premodern Eurasia

The 10th/16th century was a time of significant transformation of the region, associated with the creation of new polities in Eurasia, which had a major impact on the development of world history as well. It is believed that “by the end of the 10th/16th century, the Ottoman Empire, the Mughal Empire, and the khanates of Maverannahr [Transoxiana] together ruled approximately one-third of humanity (i.e., approximately 160 million of an estimated 500 million human souls) and had complete control over the globalizing economy of the Old World, centered on the Indian Ocean and the Silk Road” [57, 355].

It was important not only to secure the physical boundaries of the polities by military action. It was crucially important to indicate the boundaries of the “Context of Revelation”¹⁴ which any give dynasty was defending. Legal writings played a key role in

¹³ According to al-Kawafi (d. 990/1582), out of 544 Hanafi faqihs, known in the Muslim world, 221 belonged to Transoxiana, which is 42 %. 45 faqihs lived during the Samanid period, 133 (!) – during the reign of the Qarakhanids, and 43 – in the period of the Mongol conquests [13, 99].

¹⁴ This notion was introduced by Sh. Ahmed in understanding the «Context of the Revelation» as “the full encyclopedia of epistemologies, interpretations, identities, persons and places, structures of authority, textualities and intertextualities, motifs, symbols, values, meaningful questions, and meaningful answers, agreements and disagreements, emotions and affinities and

shaping the very type of these polities, their administrative, social, and religious norms, and practices. An amazing mobility of scholars and the uninterrupted traffic of legal ideas and works formed an intense legalistic discourse as part of the intellectual development of the region.

At the core of that discourse was the problem of “correct faith”, “...the body of meaning that previous generations of Muslims produced in their hermeneutical engagement with the Revelation as to what it means to be a Muslim in general and, ... a Sunni Muslim in particular” [45, 2, f. 6]. This is why the legal achievements of the past have been in such demand. Again and again, Abu'l-khayrids and Ottomans applied to the Qarakhanid jurisprudential legacy, its certain concepts and ideas, which fruitfully influenced the development of other moral, political, and juridical doctrines [33; 46, 67; 24].

Thus, some scholars drew attention to the concept of “*s'ai bi'l-fesad*” (“*spreader of corruption*”) developed in the Qarakhanid Transoxiana and widely used in Ottoman jurisprudence of the 10th/16th–11th/17th c. The texts show that it dealt with a person who poses a threat to both social order and political power, committing crimes such as heresy, sodomy, and apostasy. It dates back to the 5th/11th c., “when it acquired its legal meaning in jurisprudential debates among Maturidi jurists during periods of political turmoil and madhhab factionalism in Transoxiana. Central to these debates was the question: Is it legitimate to kill non-Hanafī Muslims for political reasons? In this context, fiqh served as a distinct technique and art of governing that gave the ruler legal sanction to act against different segments of society, particularly in times of political crisis. During a political interregnum, for the safety of the state, jurists gave the sovereign the power to punish not only “infidels” but also “Muslims” [24, 2, 19].

We reveal not just mechanical borrowing of past ideas but an in-depth analysis of their context and its reproduction according to new challenges. A perfect sample of such work is a story of the famous fatwa Kamalbasha zada to confirm the correctness of the views of Ibn al-Arabi (560/1165–638/1240), a prominent Muslim thinker and mystic of Spanish origin, as fully consistent with shari'a. This writing can be found in the Tajikistan collection under the title *Surat fatwa Kamal basha zada fi haqq ash-shaikh Muhyya ad-Din b.al- 'Arabi* (Fatwa [issued] by Kamalbasha zada on the right of Muhiyy ad-Din Ibn al- 'Arabi) (Tabl. 1). This fatwa was at the heart of the common legal discourse of Eurasia [66].

The desire to unify religious-legal platform in state-building and managing enriched the context of a well-known concept of “ghaza/ghazavat” by turning it toward the interior of the community. There are at least two noteworthy points in the two abovementioned fatwas from two different polities. First, the use of the concept of “ghaza/ghazavat” against their inner enemies¹⁵. Some scholars consider that the importance of the concept of “holy war” from the 9th/15th c. was so great that it defined the identity of the Ottomans, outweighing all its other (identity) semantic and value components [35, 50–51]. The application of the component in the Shibanid society revived the essential symbols of the nomadic community and “worked” to legitimize the image of the righteous Chingizid

affects, aesthetics, modes of saying, doing and being, and other truth-claims and components of existential exploration and meaning-making in terms of Islam that Muslims acting as Muslims have produced” [19, 356–357]. Citation from 44, 2, f. 6.

¹⁵ In the Ottoman realm one famous fatwa states that “the struggle against the Qizilbash is considered the greatest ghaza, and people who join this struggle are considered both ghazis and martyrs” [26, 22].

ruler.¹⁶ And in this sense, as H. Albarran rightly pointed out, the concept of “holy war” is an ideology of violence justification, acting as a discursive tool, appealing to the sacred elements accepted and shared by those to whom it is addressed” [20, 118].

Tabl. 1. List of works on Fiqh composed in Arabic in X/XVI c. / Center of written heritage, Tajikistan

№	Inventory number	Title of the composition	Name of the author	Number of folios	Dates and Place of composition and copying	Notes
1	4376	و الاشياء النظائر	بن الدين زين : بن محمد بن ابراهيم بابن بكر المعروف بن المصري نجيم (926–970/1519– 1563)	360 (1a – 360b)	Composed: 969/1562 Copied: X/XVI c.	<i>Fiqh.</i> With <i>wasiyat nama</i> of Abu Hanifa (77–150/696– 767)
2	2624	The same		218 (1b – 218b)	Composed: 969/1562 Copied: 1088/ 1677 (f. 218b)	<i>Fiqh.</i> Stamp of the owner
3	1496	ايضاح الاصلاح or شرح اصلاح الوقاية	بن احمد الدين شمس باشا كمال بن سليمان (d. 940/1533)	252 (1b-252b)	Composed: 928/1522 Copied: 1240/1825	<i>Fiqh.</i> <i>Commentary on Islah alwiqayya</i> A copy of the author’s lifetime
4.	2626	البحر الرائق في شرح كنز الدقائق	الشيخ زين العابدين بن ابراهيم ابن النجيم المصري (926/1519 – 970/1562)	415 (1b-415b)	Composed: 959/1557 Copied: X/XVI c.	<i>Fiqh.</i> <i>Commentary on Kanz al- daqaiq</i> by Hafiz ad- Din Nasafi (d. 710/1310). The first kitab. Stamps of waqf
5.	1209	The same		605 (1b-605a)	Composed: 959/1557 Copied: 1183 / 1769	<i>Fiqh.</i> <i>Commentary.</i> Stamps of the owner.

¹⁶ Coins of both Qarakhanid and Shibanid rulers had “al-ghazi” in their titlature [3; 7].

6.	4240	جامع الرموز or شرح النقاية مختصر الوقاية	الدين شمس مولانا الدين حسام بن محمد القهستاني الخراساني (d.963/1556)	368 (1b – 368b)	(f. 605a) Composed: 941 / 1535 Copied: Up to 942/1536 Beg. in Herat, fin. in Bukhara	<i>Fatwa.</i> 2 daftars. I-Taharat- Ayman II-Bay ‘- Khunsa. Dedicated to ‘Ubaydullakha n (r. 939 - 945/1533 - 1539) Possibly autograph. Belonged to waqf
7.	2473/I	جامع المتفرقات	Unknown	158 (1b – 158a)	Composed: X/XVIc. Copied: 1294 / 1877; the mosque of Muhammady arbak	<i>Fatwa.</i> In two languages: Arabic and Tajik
8.	3603	حسب المفتين or فتاوى حسب المفتين	امير ابو المعالي امين بن خواجه مولانا البخارى (d. after 970 /1563)	354 (1a – 354a)	Composed: X/XVIc. Copied: X/ XVIc.	<i>Fatwa.</i> These fatwas were collected and compiled into one book by one of the famous Qazis of Bukhara, Qazi Azizan, and his cousin Amir Abu l- ma’li. in the holy Mecca, and dedicated to Khan of Bukhara, Pir Muhammed Khan (r.963-68/1556 –61)
9.	4897/ I	في الرسالة طبقات بيان الفقهاء	ابن احمد الدين شمس كمالباشا ابن سليمان كمال ابن ب معروف پاشا (d. 940/1533)	1 (1a)	Composed: X/XVI Copied: X/XVIc.	<i>Usul al-fiqh.</i> 7 tabaqat of fuqaha according to Hanafi views

10.	4948/ I	The same		44 (1b-44b)	Composed: X/XVI Copied: XIII/XIXc.	<i>Usul al-fiqh.</i>
11.	3731/ V	شرح فقه الكيداني or شرح مقدمة الصلوة، شرح الرسالة الكيدانية، شرح على مطالب المصلى للكيداني، جامع المعاني في شرح فقه الكيداني	مولانا شمس الدين محمد بن حسام الدين الخراساني القهستاني (d. 963 / 1556)	23 (66b - 88b)	Composed: 949/ 1542 Copied: 1194/ 1780 (f. 98a)	<i>Fiqh. Commentary on uqaddimat as-salat by Lutf Allah al-Kaidani (d.appr .749/1349)</i>
12.	3993	النفاية شرح مختصر الوقاية or شرح ابي المكارم	الله عبد بن المكارم بو السمرقندي محمد بن (d. after 907 /1502)	267 (1a – 267a)	Composed: 907/1502 Copied: 961 / 1554, Balkh.	<i>Fiqh. Commentary on Mukhtasar al Wiqayya by ‘Ubayd Allah b. Ma’sud al-Mahbubi (d.747/1346).</i>
13.	4119	The same		462 (1b – 462b)	Composed: 907/1502 Copied: X/XVI c.	<i>Fiqh. Commentary. Stamp of waqf with the date 1222/1807</i>
14.	4948/I I	The same		436 (1b – 436a)	Composed: 907/1502 Copied: X/XVI c.	Stamps of 4 owners, a qadi among them. Note on buying the copy in 1301/ 1883 from mulla Diya ad- Din Khwaja, known mudarris.
15.	4589	النفاية شرح مختصر الوقاية	مولانا كمال الدين عبد العلي بن محمد بن حسين البرجندي (d. after 935	388 (1b.- 388a)	Composed: 907/1501 Copied: 949 / 1543	<i>Fiqh. Commentary on Mukhtasar of Wiqaya by</i>

			/1529)		Bukhara	Sadr ash-Shari'a al-Mahbubi (d.747/1346). A copy was rewritten according to the author's example
16.	1385	صحیح الروایة	Unknown	331 (1a – 331b)	End of X/XVI – beg. of XI/XVII c.	<i>Fiqh. Commentary on Mukhtasar of Wiqaya</i> by Sadr ash-Shari'a al-Mahbubi (d.747/1346).
17.	3874/VI	صورة فتوى كمال باشازاده فى حق الشيخ محى الدين ابن العربى	شمس الدين احمد بن سليمان بن كمال باشا، معروف به كمال باشازاده (d. 940 / 1533)	2 (149b – 150a)	Composed: X/XVI Copied: 1265 / 1848 (f. 172b)	<i>Fatwa.</i> Kamalbasha zada issued a fatwa to confirm the correctness of views of Ibn al-Arabi (560/1165-638 /1240) since they all are in accordance with Shari'a.
18.	3424	المفتى عين لعين المستفتى	بن ابراهيم درويش الطبّاخ (d.1003 / 1595)	63 (1b – 63b)	Composed: After 1003 / 1595 Copied: End of X/XVI or XI/XVIIc.	<i>Fatwa.</i> Belonged to Haramain Sharifin Waqf. In 1212 /1797 it passed into the possession of Muhammad Tahir b. Kujala Efendi, and then donated to the library of Ibrahim Pasha (appr.898/1493 -942/1536) in Istanbul. The copy may have been written during

						the author's lifetime and is unique.
19.	4349/ II	الفتاوى الإمد نية لما فيه من الو دائع اليقينية	محمد أمين بن عبد الله مومن آبادي (d. after 978 /1570)	132 (1b – 132a)	Composed: 978 /1570; Balkh. Copied: End of X/XVIc.	<i>Fatwa.</i> Fatwas in two languages, Tajik and Arabic. Taharat- Wasayya
20.	3551/I	The same		181 (1b – 181a)	Composed: 978 /1570; Balkh. Copied: 1243 / 1834 Kokand (f. 181a).	<i>Fatwa.</i>
21.	2614/ III	فتاوى اهل بخارى	Unknown	91 (55b – 145b)	Composed: X/XVI c. Copied: 1295/ 1878.	<i>Fatwa.</i> The text is not complete. Only muqaddima and bab of Taharat
22.	2985/ IV	مختصر غنية المتمل	ابراهيم بن محمد الحلي (d. 956/1549)	136 (10b – 145a)	Composed: X/XVIc. Copied: 1254/1838; Kokand (on f. 145a).	<i>Fiqh.</i> <i>Commentary</i> of <i>Munyat al-</i> <i>mussali</i> by Sa ‘d ad-Din Kashghari (d. 860/1456)
23.	1807	الفحول مدار شرح في منار الاصول	مؤمن الله عيد ابو : محمد ابن محمد الدين ملقب الهروي عمر المسكين مؤن ب (d. 909 /1503)		Composed: End IX-beg. X/ End XV- beg.XVI Copied: 990/1582.	<i>Fiqh.</i> <i>Commentary</i> to <i>Manar al-</i> <i>anwar fi usuli</i> <i>fiqh</i> Abu l- Barakat Hafiz ad-Din Nasafi (d. 710/1310- 11), introduction into methodology of fiqh
24.	2123	هديا الصلوة كفي شرح حفة الملوك	ابواليث محرم بن محمد لزيلى (d. 1000 /1592)	152 (1a – 153b)	Composed: 979 /1571. Copied: XIII/XIXc.	<i>Fiqh.</i> <i>Commentary</i> of <i>Tuhfat al</i> <i>muluk</i> , which

						the author considered as a work of Zain ad-Din Muhammad b. Abu Bakr ‘Abd al-Muhsin ar-Razi (250 or 251 - 313 or 323/864 or 865-925 or 935)
25.	5022	[شرح الهداية] The title is not fixed	Unknown	244 (1a – 244b)	Composed: 955 / 1545; Misr al - mahrusa Copied: 955 / 1545; Misr al - mahrusa	<i>Fiqh. Commentary on AL-Hidaya fi sharkh al-bidayat al-mubtadi</i> Second part. Stamp of the owner, qazi dated 1317/1899

We find such samples in the history of both Abu'l-khayrids and Ottomans. Accusations of heresy, supported by relevant fatwas on ghazavat were used at the beginning of the rule of Muhammad Shibani Khan and led to the removal of Qazakh tribal leaders,¹⁷ as well as during his conquests of mountainous territories inhabited, according to Muhammad Salih, by “infidels” and by Ismailis “recognizing no one but Ali” [9, 142]. The same attitude was shown by the Ottoman rulers to the Qizilbash of Anatolia, who were called rafidi (rejectors, infidels, heretics, apostates)¹⁸.

It is indicative that in the fatwas of the officially recognized faqih in the empire, Ebussuud, confirming the legitimacy of Qizilbash killing, did not introduce relaxations even in the case of their belonging to the transnational and transconfessional ecumenical community of sayyids. His famous fatwa noted that “even if it is true that ‘he is a sayyid,’ why does it matter since he is an unbeliever (dinsiz). According to it, the blood tie is irrelevant when the person is not a true Muslim, a firm supporter of Islamic rule. Through giving an example concerning Noah’s son, Ebussuud emphasizes the fact that no one would be saved only because of the blood-tie”¹⁹.

The faqihs’ reference to the stories of the Qur’an and the history of the early stage of Islam in the process of composing a fatwa testifies to the actualization of the image of

¹⁷ Qazakhs were accused of shari’a sins such as stone worship and belief in sorcerers, the rituals which, according to numerous sources, were equally characteristic of nomadic Uzbeks.

¹⁸ This term was used by the Ottoman legalists of the 10th / 16th c. to denote affiliation with any non-Sunni religious group, not necessarily Shi’ite [26].

¹⁹ Ebussuud explained that “The Qur’an mentions Kanan, the son of Noah, as the only family member of Noah who could not be saved due to his disbelief of Noah’s message” [26, 23].

the past and its “revival” in the mass consciousness is a certain practice of “mnemohistory”,²⁰ which has to do not with the past as such, but with the past that had to be actualized in the light of emerging socio-political challenges [5]. The rites and norms of the traditional way of life of the Chinggisids had not been forgotten as well.

Thus, recent studies lead to the idea that in the struggle for “correct faith and practice” in the legalist discourse, we are facing different hypostases of religion – religion as a symbolic system, and religion as a basis for the construction of ideology. Understood as a spiritualistic system, it implies openness and the ability to perceive a multiplicity of meanings; used for ideological purposes, the system of views itself becomes closed, and the symbolism turns into dogma [39, 11], and “in such circumstances, social groups are categorized along political and religious lines, but the dividing line, religious in principle, is de facto political” [21, 90].

A study of the legal writings of that period evidences that their struggle against heresy and apostasy expressed by many different concepts – *kufr*, *bid‘a*, *ilhād*, *zandaqa*, *ghulūww*, etc. [62, 196, f. 3], had the aim to urge every true Muslim to consolidate in defending the values of Islam, “constantly asking questions about how the belief and practice in real life compared to the theological norms and expectations, it was imperative to find a way to instill a sense of community” [69]. Such understanding was extremely important for enforcing the correct religious identity and building a pious community but for building and legitimizing a territorial state.

A brief review of legal writings in two research holdings

My selection of legal writings is limited to materials from Tajikistan and Uzbekistan published in two well-known catalogs: *Katalog vostočnyh rukopisej Akademii nauk Tadžikistana* (Catalogue of Oriental Manuscripts of the Academy of Sciences of the Tajik SSR, further – KVR Tj), and *Sobranie vostočnyh rukopisej Akademii nauk Uzbekistana* (Collection of Oriental Manuscripts of the Academy of Sciences of the Uzbek SSR, further – SVR Uz)²¹. Some unpublished data of the Arabic language manuscripts from Tajikistan are also presented.

Tajikistan: the Written Heritage Centre of the National Academy of Sciences

My brief review of the manuscripts should be preceded by an important remark. From the beginning of cataloging manuscripts in Tajikistan (since 1950) to the present, their main subject matter are works of Tajik-Persian literature, especially poetry. Although there are descriptions of writings of other genres in the 10 published KVR Tj volumes, including some works on fiqh, they are very few.

Therefore, I rely much more on a separate section of its little known 634 Arabic-language manuscripts. Sayyidnuriddin Shahobiddinov (1943–2021), an excellent specialist, dedicated decades of his life to their examination and cataloging [18]. We plan to publish a two-volume catalog of these manuscripts; this material was edited and translated by me for the Russian publication.

Its “Fiqh” section contains 169 items, including 29 manuscripts dating to the 10th/16th c. (about 17 percent), which is lower only than the number of folios dating to the 13th/19th c. (34 copies which make 20 percent). Only a few of the manuscripts of the 10th/16th c. have their copying locations fixed. According to additional data, S.

²⁰ On mnemohistory: 22.

²¹ I used only published materials from Uzbekistan having not seen the manuscripts in situ.

Shahobiddinov determined the origin of the vast majority of them as belonging to Transoxiana.

We propose brief data on the works that were either copied in the 10th/16th c. (Tabl. 1) or were created at that time but were rewritten later (Tabl. 2). Understanding that our collection, like many others, represents incidental findings and acquisitions, we consider that to link all these manuscripts of 10th/16th c. directly to Abu'l-khayrid dynasty is incorrect.

We rather take this data as information on the trends in the legalist discourse that has unfolded in that part of the Dar ul-Islam. It is this thought that has given us the courage to add to this material five other manuscripts created in Balkh (Tabl. 3)²² in 1017 / 1608–1023 / 1614, i. e. the period that was close to our interest. It appears that in this case, we will have the most complete picture of the reproduction of legal knowledge in that era.

*Uzbekistan: A. Biruni Institute of the National Academy
of Sciences of Uzbekistan*

In 5 volumes of the SVR Uz (vols. IV, VI, VIII, IX, X, XI) 218 folios of a legal nature (fiqh, shariah, and biographies of jurists) are recorded, of which 27 were dated to the 10th/16th c. (a little more than 12 %). Here too, there is a significant preponderance of 13th/19th c. items. The language of all the works is Tajik, as the language of the bulk of the local population and well known to the representatives of higher echelons of the ruling military elite.

**Tabl. 2. A list of compositions in Arabic copied in X/XVI c. /
Center of written heritage, Tajikistan**

№	Inventory number	Title of composition	Author	Number of folios	Dates and places of composing and copying	Notes
1.	1633	التلويح في كشف حقائق التنقيح	علامة سعد الدين مسعود بن عمر التفتازاني (712/1312 – 792/1389)	213 (1b–213a)	Composed: 758/1357 Copied: X/XVIc.	<i>Fiqh.</i> Supplement to <i>at-Tawzeh fi jalli ghawamiz at-Tanqeh</i> by ‘Ubayd Allah b. Mas ‘ud al-Mahbubi (d.747/1346) on usul al-fiqh

²² The role of Balkh in the history of the Khanate is well known. The close relationship between jurists of Central Transoxiana, Bukhara, and Balkh, and their disputes on legal issues are well documented in many written sources, and in the collections of fatwas [59, 13 ff.].

2.	2457	التوضيح or شرح مقدمة ابى الليث	الشيخ مصلح الدين مصطفى بن زكريا بن أيدغمش القرمانى (d. 809 /1406)	87 (16 – 876)	Composed: VIII/XIV Copied: X/XVI c.	<i>Fiqh.</i> <i>Commentary</i> on <i>Muqaddamat</i> <i>al-salat</i> by Abu l- Lays as- Samarqandi (appr.332- 372/944- 983).
3.	715/I	التوضيح فى حل غوامض التنقيح	الشريعة الثانى عبيد الله بن مسعود المحبوبى (d. 747/1346)	128 (1b – 128a)	Composed: VIII/XIVc. Copied: X/XVI c.	<i>Usul al- fiqh.</i> <i>Commentary</i> on <i>Tanqej al-</i> <i>usul,</i> by ‘Ubayd Allah b. Mas ‘ud al- Mahbubi (d.747/1346). Mufti's property.
4.	5007	حاشية على شرح الوقاية	يقوب باشا بن خضر بيك ابن جلال الدين الرومى (d. 891 /1486)	166 (1a – 166a)	Composed: IX-XV c. Copied: 956 / 1549	<i>Fiqh.</i> <i>Commentary</i> on <i>Sharkh al-</i> <i>Wiqayya</i> by Sadr ash- Shari’a ‘Ubaydullah al-Mahbubi (d.747/1346). Taharat – Wasaya
5.	3275	خزانة الفتاوى	احمد بن محمد بن ابى بكر الحنفى البخارى (d. 522 / 1128)	186 (1b – 186b)	Composed: VI/XII Copied: 953 / 1546 (f. 186b)	<i>Fiqh,</i> <i>Fatwas.</i> Taharat- Fawa'id
6.	3762/I	The same		122 (1b – 122b)	Composed: VI/XII Copied: 982/ 1574 (f. 122a)	<i>Fiqh.</i> <i>Fatwas.</i> Complete copy. Stamps of the owners.
7.	2855	خزانة المفتين	الشيخ الامام الحسين بن محمد	709	Composed: 740 / 1339;	<i>Fiqh.</i> <i>Fatwas.</i>

			بن الحسين الحنفي السمنقاني الفريومدي (d. after 740 / 1339)	(1b – 709b)	Faryumad. Copied: 937/ 1530 (f. 709b)	In 2 daftars. I – Taharat – Waqf; II - Bay‘ – Fara’id
8.	1582	خلاصة الفتاوى	طاهر بن احمد بن عبد الرشيد البخارى (d. 542/1147)	473 (1b – 473a)	Composed: VI/XII- Copied: X/XVIc.	<i>Fiqh.</i> <i>Fatwas.</i> 2 parts: I-Taharat- Buyu‘ II-Ijarat- Shuf‘at Waqf property.
9.	2119	The same		278 (1b – 278a)	Composed: VI/XII Copied: X/XVIc.	<i>Fiqh.</i> <i>Fatwas.</i> Taharat- Ijarat
10.	1199	The same		278 (1b – 278a)	Composed: VI/XII Copied: 977/ 1577 (f. 278a)	<i>Fiqh.</i> <i>Fatwas.</i> Ijarat- Shuf‘at. Stamps of the owner.
11.	3183	درر الحكام في شرح غرر الأحكام	محمد بن فرامرز بن علي الشهير بمنلا خسرو (d. 885 /1480)	320 (1b – 320a)	Composed: 883 / 1480 Copied: 964 / 1557	<i>Fiqh.</i> <i>Commentary.</i> on <i>Ghurar</i> <i>al-ahkam.</i> 55 kitabs. Taharat – wasaya.
12.	5425/V	زلة القارى	نجم الدين ابو حفص عمر بن محمد النسفى (461/1068 – 537/1142)	4 (53a – 56a)	Composed: VI/XIIc. Copied: 972 / 1564 (f. 4b)	<i>Fiqh.</i> On mistakes reading during namaz.
13.	5442	شرح مجمع البحرين و ملتقى النهرين	الامام مظفر الدين احمد بن علي بن ثعلب، معروف به ابن الساعاتى البغدادى (d. 696 / 1296)	273 (1b – 273a)	Composed: VIII/XIII c. Copied: X/XVIc.	<i>Fiqh.</i> <i>Commentary.</i> Stamps of waqf dated 1305 /1888.
14.	1009/I	عنوان الشرف الوافى فى الفقه و النحو	شرف الدين اسماعيل بن ابى	143 (1b – 144a)	Composed: 804/ 1401; Yemen	<i>Fiqh Shafi'i.</i>

		والتأريخ و العروض و القوافي	بكر المقرئ اليمنى الشاوري (d. 847/ 1433)		Copied: X/XVI c.	The first part of the composition.
15.	1673	الفتاوى السراجية	سراج الدين على بن عثمان بن محمد الاوشى (after 569/1173)	446 (1a – 446b)	Composed: 569/ 1173; Ush (Farghana) Copied: X/XVI c.	<i>Fiqh.</i> <i>Fatwas.</i> 54 kitabs. Mentions of many previous collections.
16.	4375	فصول الاحكام فى اصول الاحكام or الفصول العمادية	ابو الفتح عبد الرحيم بن ابى بكر بن عبد الجليل المرغينانى (d. after 651 /1253)	435 (1b – 435a)	Composed: 651 / 1253; Samarqand Copied: 937 / 1531; Qubbat al- Islam Balkh (f. 435a)	<i>Fiqh.</i> <i>Fatwas.</i> The owner was the mufti. Waqf property.
17.	5425/ III	فقه الكيدانى or خلاصة الكيدانى، مقدمة الصلوة، مطالب المصلى، رسالة فى انواع المشروعات و غير المشروعات	الفاضل لطف الله النسفى الكيدانى (d. 750/ 1399)	4 (47b – 50a);	Composed: VIII/XIVc. Copied: 972/ 1564 (f. 46b)	<i>Fiqh, Fatwas.</i> Popular teaching manual. 8 babs. Mentions of many sources
18.	3514	الكافى فى شرح الوافى	حافظ الدين ابو البركات عبد الله بن احمد بن محمود النسفى (d. 710/1310)	408 (1b – 408a)	Composed: 710 /1310; Bukhara Copied: X/XVIc.	<i>Fiqh.</i> <i>Commentary.</i> Daftar 1. Taharat- Waqf. Stamp of waqf with date 1254/1838.
19.	2553	كنز الدقائق	حافظ الدين ابو البركات عبد الله بن احمد النسفى (d. 710/1310)	194 (1b – 194b)	Composed: VII or VIII/XIII or XIVcc. Copied: X/XVIc.	<i>Fiqh.</i> <i>Fatwas.</i> Taharat- Fara'id Waqf property.
20.	3902	مختار الفتاوى	شيخ الاسلام برهان الدين ابو	177	Composed:	<i>Fiqh.</i> <i>Fatwas.</i>

			الحسن على بن ابي بكر بن عبد الجليل الرشدي المرغيناني (d. 593/1197)	(1a – 177a)	567 / 1171; Arsh (or Arash) Copied: 1002/ 1594 (f. 177a)	Taharat- Fawa'id
21.	1807	في الفحول مدار منار شرح الاصول	الله عبد ابو الدين مؤمن محمد ابن محمد الهروي عمر مؤن ب ملقب المسكين (d. 909 /1503)	218 (1b – 218a)	Composed: End of IX/XVc. Copied: 990/ 1582	<i>Commentary on Manar al-anwar fi usuli fiqh</i> by Abu l- Barakat Hafiz ad-Din Nasafi (d.710/1310- 11). Introduction into methodology of fiqh
22.	4171	الهداية في شرح بداية المبتدى	الاسلام برهان الدين ابو الحسن على بن ابي بكر بن عبد الجليل الرشدي المرغيناني (d.593/1196)	370 (1b – 370b)	Composed: 573/1178; Samarqand. Copied: 916/ 1510 (f. 3706).	<i>Fiqh. Fatwas. Daftar 2. Buyu' – Hunsa</i>
23.	3782	The same		397 (1b – 397b)	Composed: 573/1178; Samarqand. Copied: 975/ 1567 (f. 397b).	Daftar 2. Buyu' - Hunsa.
24.	3545	كتاب في [الفتاوى] The real title is unknown	Unknown	125 (3a – 127b)	Composed: Time is not fixed Copied: X/XVIc.	<i>Fiqh Shafi' ' Fatwas. Taharat- Adab al- mufti</i>
25.	2856	كتاب في [فقه]	Unknown	357 (1b – 357b)	Composed: Time is not fixed Copied: X/XVI c.	<i>Fiqh Shafi' ' Waqf property</i>

Tabl. 3. List of manuscripts rewritten in Balkh at the beginning of XI/XVII c.

№	Inventory number	Title of compositions	Author	Number of folios	Dates and places of composing and copying	Notes
1.	1259/II	Without concrete title [قواعد الفتاوى]	Unknown	17 (185b – 201a)	Composed: Time is unfixed Copied: 1017/1608 Balkh, the mosque Darziyan.	<i>Fiqh. Fatawa.</i> 2 parts. I-39 rules of fiqh, mainly on « <i>Usul</i> » of Imam Abu l-Hasan Karkhi (d.340/952). II - Fatwas.
2.	1259/I	جواهر الفتاوى	ركن الدين ابو بكر محمد بن عبد الرشيد الكرمانى (d. after 577/1181)	184 (1b – 184b)	Composed: 577/1181 Copied: 1017 / 1608; Balkh	<i>Fiqh. Fatawa.</i> 66 babs with fatwas of faqihs of Mawarannahr and Khorasan
3.	1259/V	الفتاوى السراجية	سراج الدين على بن عثمان بن محمد – الاوشى (after 569/1173)	126 (289b – 414 a)	Composed: 569/ 1173; Ush (Farghana) Copied: 1023 /1614 Balkh, the mosque Darziyan	<i>Fiqh. Fatawa.</i> Complete text.
4.	1259/VI	الفتاوى الكافورية	محمد بن حاجي محمد بن الحسن السمرقندى (I half of VIII/XIV c.)	72 (415b – 486a)	Composed: I half of VIII/XIV c. Copied: 1023 /1614 Balkh, the mosque Darziyan	<i>Fiqh. Fatawa.</i>
5.	1259/III	كتاب المحاضر و السجلات	Unknown	357 (1b – 357b)	Composed: The time is not fixed Copied: 1017/1608 Balkh, the mosque Darziyan	<i>Fiqh.</i> 12 babs Belonged to waqf.

A repertoire of the legal writings in both research holdings

Familiarization with the materials of both collections shows a significant demand for theoretical works that became recognized teaching materials for generations of Sunni ulama and faqihs.

In the Tajikistan collection, a significant number of sharhs (commentaries) on the most influential treatises, first of all, such reference works as *Wiqayat ar-Riwaya fi Masa'il al-Hidaya* and *Kanz al-Daqa'iq fi-l-furu'*. It is known that Hafiz al-Din Abu-l-Barakat al-Nasafi (d. 710/1310) compiled his *Kanz al-Daqa'iq* using as its basis *Kitab al-Hidaya* by Burhan al-Din al-Marginani (d. 593/1196) and *al-Fiqh al-Nafi'* by Nasir al-Din as-Samarqandi (d. 556/1161). With time, *Kanz al-Daqa'iq* and its commentaries formed the second group (family) of Hanafi manuals of the post-Classical period following the family of *al-Hidaya* [13, 202]. Thus, according to scholars' calculations, a total of 54 works have been devoted only to the study of *al-Wiqayah*. On *At-Talvih fi kashf haqa'iq at-tawdih* of Sa'd ad-din at-Taftazani (d. 792/1390) a total of 28 hashiyyahs and four ta'liqs were compiled [13, 202].

In this collection, we see sharh on *Islah of Wiqaya*, three copies of the sharh on *Mukhtasar al Wiqayya* by 'Ubayd Allah b. Ma'sud al-Mahbubi (d. 747/1346), a copy of the sharh on *Mukhtasar of Wiqaya* by al-Mahbubi written by Kamal ad-Din al-Burjandi (d. after 935 /1529). There are 9 copies of various works rising to *Wiqaya*, two copies of the sharh on *Kanz al-Daqa'iq* by Nasafi, one copy of the supplement to *at-Tawzeh fi Jalli Ghawamiz at- Tanqeh* by al-Mahbubi on the famous treaty of Taftazani on *usul al-fiqh* and some other commentaries on important legal works (Tabl. 1 and 2). And of course, there are copies of the famous *Hidaya fi Sharkh Bidaya al-Mubtadi* by Burhan ad-Din Marghinani rewritten in the X/XVI c., in 916/1510, and 975/1567.

Uzbekistan collection keeps 3 copies of the 12th/18th – 13th/19th c. of translations into Uzbek of *Mukhtasar al-Wikaya* and a copy of the translation to Tatar. All of them were made on the basis of the Tajik translation from Arabic implemented in the 10th/16th c. There is also a sharh on *Mukhtasar al-Wiqaya* by al-Burjandi translated from Arabic in Khiva. There are 4 copies of the translation into Farsi of the *Kanz al-Daqa'iq* made by Nasr Allah b. Muhammad al – 'Irdi, known as Kirmani (dated from 991/1583, 1079/1688, 11th/17th c., and 12th/18th c.).

It is of special note that *Kanz al-Daqa'iq* is devoted to the presentation of the general juridical principles by comparing the provisions of the Hanafi and Shafi'i interpretations. The bulk of the writings in both holdings are composed of the views of the predominant Hanafism, but some number of the Shafi' works (Tabl. 2) confirm its certain influence in Transoxiana as well²³.

Both collections contain copies of *ar-Risala fi Bayai Tabaqat l-Fiqaha* by Shams ad-Din Ahmad b. Sulaiman b. Kamalshah known as Ibn Kamalshah (d. 940/1533). This work explains the difference between the seven tabaqat of fuqaha according to the Hanafi views. The first tabaqat consists of mujtahidan in shar' ; the second are mujtahidan in madhab, the third are mujtahidan in masail; the fourth – mujtahidan in ashab at-tahrij from jumlai muqallidan, etc. Tajikistan copies are written in the 10th/16th c., Uzbekistan manuscript is copied in 1229/1814.

The treatise *Mukhtar al-Ikhtiyar al-Madhab al-Mukhtar* (*Selections of Ikhtiyar on the Chosen Madhab*) is noted in both collections. The famous Herat judge Ihtiyar b. Ghiyas

²³ The influence of Shafi'ism in Transoxiana in the Shibanid period is confirmed by some facts. So, Muhammad Shibani Khan "accepted into his service a leading Shaf'ite scholar and former student of Jalal ad-Din Davani, Fazlullah b. Ruzbihan Khunjī (d. 927/1521), who provided the legal justification for Uzbek actions" [65, 133, f. 50].

al-Din al-Husayni (d. 927/1520) at the request of his friends wrote in 908/1502 a book on the peculiarities of the court process. The first section deals with judicial proceedings, the second one with judicial proofs, and the third part explains the order of court hearings. Uzbekistan holding has 2 copies, one of the author's lifetimes, that of 912/1506, another of 980/1572. A much later WHC NAST manuscript of 1286/1869 retains traces of intensive work on the text, with many glosses and explanations of the text in the margins.

Collections of fatwas in two holdings

Both our research holdings contain the collections of fatwas. Here we can focus on just a few of them.

The Uzbekistan holding contains most valuable works by very famous faqih of the turn of the 9th/15th – 10th/16th centuries 'Ali b. Muhammad 'Ali b. 'Ali b. Mahmud al-Mukhtari al-Khwarazmi al-Kubravi. Having received his education in Bukhara, he spent some time studying under the famous faqihs of Khorasan and Khwarazm, and, having returned to Bukhara again, served as a qadi under the last Shibanids and then Tokay-Timurids (1008/1599–1200/1785).

He wrote several works that played the role of the most important guides on fiqh and shurut (compilation of private acts) for many generations of jurists of the region. One of the most famous collections of fatwas compiled by him is *Fatawa ash-Shaybani* (*Shaybaniyya fatwas* or *Fatwas dedicated to Shaybani*).

There are two known author's editions of this work dedicated to Muhammad Shibani Khan. The first refers to 901/1496, when the famous Shibanid was just struggling for supreme power, and the second was completed around 929/1523, twelve years after his death. The manual of fatwas consists of 44 books containing answers to complicated questions of a juridical and theological nature. There are 14 copies of this work in this holding; they are of different sizes and quality. Nine copies date to the Shibanids time, five to the XIIIth/XIXth c., and one – to the 11th/17th c. (?).

'Ali b. Muhammad al-Mukhtari al-Khwarazmi al-Kubravi compiled another famous collection of fatwas, *Fatawa 'Aliya*, consisting of 45 books whose content is close to *Fatawa ash-Shaybani*. He succeeded to systematize the material from both collections in a compendium of samples of the Muslim notary documents and legal proceedings (qadi's documentation) known as *Jawami' al-'aliyat fi wasayik ash-shari 'at wa-si jillat al-mar'iat* (*A Collection of Highly Worthy [Examples] as to the Obligations and Observable Judgments*). It is noted that this work is unknown in other collections. Its author cited *al-Kashshaf* by Mahmud az-Zamarshahi (d. 538/1144), and *al-Hidaya* by Burhan al-Din Marginani. This example possibly belongs to the author's lifetime and, most certainly, was reviewed by him.

In describing the most important features of these compilations used as the guides for qadis and muftis, prominent orientalist Dmitry Voronovsky, who described them in detail, mentioned the clarity of the presentation in Tajik and a small number of quotations in Arabic. Of the authorities of the past, the authors of the pre-Mongol period turned out to be the ones whose judgments were most in demand in compiling these manuals: Muhammad b. al-Hasan ash-Shaibani (d. 187/804), Ahmad b. Muhammad b. Salam (d. 239/854), 'Ali b. Ahmad b. Muhammad at-Tahawi (d. 350/961), Abu-l-Lays as-Samarqandi (d. about 393/1003), 'Umar b. 'Abd al-'Aziz Sadr ash-Shahid (d. 536/1141), Muhammad b. Yusuf as-Samarqandi (d. 556/1161), Burhan ad-Din 'Ali al-Farghani al-Marghinani (d. 593/1197) and others. Also noteworthy in these manuscripts are the signs of intensive work on the texts by readers, such as a significant number of marginal notes

and additions, while the manuscripts themselves are, as specially mentioned, in very good condition, which indicates delicate handling.

In Uzbekistan holding, two other manuscripts also deserve profound attention. They are copies of the collection of fatwas *A'jubat al-fatawa* (*Amazing fatwas*) under the second title *Fatawa al-Dinari* (*Fatwas of al-Dinari*) after the name of the author. Since the sum of the numerical value of the letters of that title is 584 (=1188) it is considered that the author lived in the 6th/12th c. This is confirmed as well by the names of the faqihs mentioned in the work, in particular, 'Uttabi (d. 586/1190). The first copy is written in the second half of the 10th/16th c., the second was completed in 993/1585.

I conclude my short review by mentioning the works by two other very famous authors who lived in the epoch under consideration: Shams ad-Din Muhammad al-Kuhistani al-Khurasani (d. 962/1554) and Muhammad Amin b. 'Ubaydallah al-Mu'minabadi [al-Bukhari] (d. after 978 /1570).

Of al-Kuhistani's works, we should note the famous *Jami'ar-rumuz* (*Collection of hints*). The author started to write this commentary on *al-Wiqaya ar-Rivaya fi Masa'il al-Hidaya* by al-Mahbubi in Herat and completed it in Bukhara where he came with the intellectuals who accompanied 'Ubaydullah Khan (c. 940–946/1533–1539). The khan highly appreciated his zealous service to the strengthening of Sunnism and his extensive knowledge and appointed al-Kuhistani a mufti of the entire Transoxiana.

The Tajikistan example of 2 daftars is of excellent quality, dedicated to the ruling khan, and is considered to be prepared for offering to him. There are 7 copies of this treaty in the collection of the Uzbekistan fund (dated from 990/1582; 1193/1779; two of the early 13th/19th c.; two of 1270/1854; one of 1273/1856; and one of 1290/1873).

In the Uzbekistan collection, we find an uncompleted copy of the glossary of rare words and special terms found in the *Jami'ar-rumuz* written in the second half of the 13th / 19th c. Its compiler named himself al-Bulghari al-Bukhari. Speaking in his preface about the reasons to implement such a glossary he explains that “the work of the *Jami'a ar-rumuz* is very popular among the noble and the common people, but the copyists have made many changes and distortions in their lists of sources cited in the work. All this has led to unfair attacks on the text on the one hand, and unwarranted amendments to it on the other”. Al-Bulghari al-Bukhari “undertook corrections to the text, checked many old manuscripts, and corrected more than 800 distortions in it. At the same time, he found in the text many rare words and expressions and new technical terms put them in alphabetical order, and explained them. The explanation is based on 20 lexicographical and other Arabic and Tajik works (*Farhangs*), depending on the source from which the author borrows” [16, 248–249]. There is also another Dictionary of Legal Terms, part of which is dedicated to rare words of *Jami'ar-rumuz*, of 1245/1829–1830.

The works of al-Mu'minabadi are contained in both collections. The most popular writing is known under various titles: *al-Yaminiya lima fihi al-Wadai'al-Yaqiniya* [*The Treatise Itself*] *Reliability, in it [is] something from the Storehouse of Fidelity*; *al-Fatawa: al-Yaminiya lima fihi al-Wadai' al-Yaqiniya*; *al-Aminiyat fi al-furu*. In the Uzbekistan collection, there is one autograph (?), one of the end of the 10th/16th – early 11th/17th c., one of 1010/1602, one dating from 1007/1598. In the Tajikistan collection, there is one copy of the 10th/16th c., and one dated 1243/1834.

The Uzbekistan holding contains a very interesting treaty of al-Mu'minabadi, possibly his autograph of *Sharh al-Fara'id Sirajiyya*, a commentary of the book *Inheritance Law of Siraj ad-Din* by the faqih Siraj ad-Din Abu Tahir Muhammad al-Sijawandi, written in 600/1203. In a lengthy introduction to his commentary, al-Muminabadi quotes a famous hadith of Muhammad: “Study the science of inheritance

shares (fara'id), acquire it from people, for this science constitutes half of [human] knowledge" [17, 279–280].

The notes of numerous readers in the margins and the fact that many manuscripts of theological-legal writings dealing with the most important societal issues were donated to the waqfs²⁴ are the best evidence of the strong demand for this genre of literature.

Conclusion

Even such a cursory review of legal works from only two academic collections in the two post-Soviet Central Asian republics has shown the richness of a corpus of first-class sources on the history of the development of Sunni law in Transoxiana of the pre-modern era.

The bulk of the examined manuscripts contain either sharhs (commentaries) on famous medieval legal works or collections of fatwas. The number of their copies and numerous readers' notes in their margins testify to their relevance as practical law manuals.

A recent study of sharhs collections revealed that these writings cannot be perceived as literal reproductions of the basic text. Such work requires not only good knowledge of the original text, but the nature, content, and boundaries of the examined confession, and the current agenda as well [42]. As for the fatwa, it could be named as a unique tool fixing law-making procedure on the most topical issues "here and now". It is perhaps difficult to find another type of Muslim legal literature that can testify so irrefutably against the established attitude towards Islamic law as something rigid and unchangeable.

These works provide us with important clues to the symbiosis of piety and pragmatism required in building both a community and a state. Taken together, these artifacts of the written culture from a crucial moment of transition in the history of the region are perceived both as part of legal and moral reform that the Sunni communities were undergoing. They also show that legal writings were produced, read, re-produced, and circulated "in time and space". And in fact, neither that time nor that space had boundaries.

I would like to express my hope that the striking results of such research into Ottoman materials will become a kind of invitation for Central Asian scholars to begin analyzing in detail the rich heritage of our region of an era that can certainly be recognized as the second stage in the formation of Islamic law.

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²⁴ For example, we find imprints of the waqf seal of Qul Baba Kukaltash, a foster brother of 'Abdullah Khan II, "probably the greatest military genius of the the 10th/16th c., who was also prominent as a bureaucrat at the khanate level, conducting fiscal audits (taḥqīqāt) in his capacity as mosharref-e divan, and held the post of ṣadr-e ḳāni, who supervised the judiciary" [53] in the copies of A'jubat al-fatawa and Fatawa ash-Shaybani of the Uzbekistan holding.

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