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In 1904, towards the tail end of the tsarist reorganization of Caucasus geographies and on the dawn of a new political order, the Russian official V. N. Ivanenko set forth his views concerning the “Discord between Criminal Law and Folk Custom in the Caucasus and its Influence on Criminality” in the influential Russian periodical *Russkaia Mysl'* (Russian thought).¹ As the primary publisher of Anton Chekhov and other major Russian writers, *Russkaia Mysl'* commanded a wide readership across the Russian Empire, particularly among the literary elite.² Any author who published in this venue, even on the arcane subject of colonial and indigenous law, was assured the widest and most diverse audience available to any Russian writer of that era.

Ivanenko's study of the interaction of indigenous custom with colonial law ran like a lightning rod through three consecutive installments of the journal. Over the course of these installments, he postulated, “The discord between indigenous legal consciousness [*pravosoznaniem*] and [colonial] law [*pravo*], between custom [*obychai*] and law [*zakon*] ... inevitably leads to the proliferation ... of crime [*prestupnost'*].”³ Verging away from

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¹ V. N. Ivanenko, “Razlad mezhd ugolovnym zakonom i narodnym obychaem na Kavkazie i ego vliianie na prestupnost',” *Russkaia mysl'*: *ezhemiesiachnoe literaturno-politicheskoe izdanie* 4 (Apr.) 1904 / kniga IV, 205–24, 205. Two other installments are: 5 (May): 1–21; and 6 (June): 89–135. Ivanenko is also the author of *Grazhdanskoe upravlenie Zakavkaz'em* (Tiflis: Voenno-istoricheskii otdel', 1901). I first encountered this work in Daghestan's Institute for History, Archeology, and Ethnography, an institution dedicated in part to the study of Daghestani indigenous law.

² On the history and reputation of *Russkaia Mysl'*, see Joan Delaney Grossman, “Rise and Decline of the ‘Literary’ Journal: 1880–1917,” in Deborah A. Martinsen, ed., *Literary Journals in Imperial Russia* (Cambridge: Cambridge University Press, 1997), 171–96.

³ Ivanenko, “Razlad,” 205. The other two installments of this article are: 5 (May): 1–21; and 6 (June): 89–135.

ethnography and towards epistemology, Ivanenko maintained that the disjuncture between actually existing social arrangements and their normative legal description was occasioned by the encounter between indigenous ethics and colonial norms. This tension in turn caused the “factual” and the “legal” orders to be irremediably severed from each other. He later repeated his thesis, which was as forceful as it was simple, in dramatically binary terms. “The conflict between criminal law and indigenous custom either leads to the barbarization of law [*varvarizatsiia zakona*], becoming incomprehensible and demoralizing to the regime, or it morphs into a battle against the law among a handful of criminals [*prestupnikov*] who wage a fruitless struggle against the regime with [the support of] the entire population, who defend their criminals from the attacks of what is to them a gratuitous law.”⁴

Ivanenko’s understanding of the conflict between indigenous custom and secular colonial law is informed by multiple intellectual genealogies. These include the discourse of natural law, which for many late nineteenth-century and early twentieth-century intellectuals was one of the major legacies of the Enlightenment.⁵ A second relevant intellectual lineage is the elaborate conversation that had been taking place among European intellectuals for centuries, and in which Ivanenko wished to insert himself, concerning the laws governing social progress. The goal of his inquiry into the impact of the conflict between criminal law and indigenous custom on the constitution of crime is as lucid as his thesis. “Only in this way,” Ivanenko cautions would be proponents of brutal conquest, “will ancient custom give way to the new legal order” while “avoiding the destruction of local forms of life” and creating “the necessary space for long-reaching reforms.” Because, he argues, “government does not create law, but rather discovers law already latent in a people’s consciousness, and then expresses it in verbal and codified form,” a gradualist approach is necessary for the moral conquest of the Caucasus.⁶

As Michael Kemper has argued, the Russian administration’s efforts to “grant Muslims their primitive customary law was, among other things, a way to fix their ... status” as culturally inferior.⁷ The official attitude is reflected in a comment that prefaces the first Russian translation of one of the most famous compendiums of *‘ādāt* (indigenous law), named after the seventeenth-century Darghi ruler of Qitāgh in southern Daghestan, Rustam Khan (though it does not appear to have been drafted by him). According to the first Russian translator of the text, customs such as *ishkil* (the practice of “seizing the property of a debtor ... on account of the bad debt”), served as a “pretext [*povod*] for

⁴ Ivanenko, “Razlad,” 211.

⁵ For this history and its afterlife, see Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), esp. 81–119. For an Islamic counterpart, see note 32, below.

⁶ Ivanenko, “Razlad,” 209 (1st quote), 206 (2d).

⁷ “Adat against Shari‘a: Russian Approaches towards Daghestani Customary Law in the 19th Century,” *Ab Imperio* 3 (2005): 147–74, 148.

incessant theft and criminality.”⁸ By attributing to them an innate legal consciousness while asserting that this capacity had to be nurtured by the colonial order in order to become manifest, Ivanenko fixed the mountaineers as at once culturally inferior and as eminently malleable by the new legal order. His optimistic program for reform combined condescension with ignorance of the mountaineers’ indigenous forms of governance. This attitude had long characterized Russian officials’ and the Russian public’s view toward colonization of the Caucasus.

Ivanenko’s argument is clear and unambiguous. In regarding crime as the result of a conflict between two contradictory legal systems—rather than as a transhistorical category immune to variation—he introduces a still-relevant framework that merits further analysis. More in need of critique are the absolutist premises that guide his account of the relation between indigenous and colonial norms, whereby the Russian state and its emissaries are situated further along the path to progress than are the societies they are colonizing. On the basis of this view, he maintains that the colonial project is justified because it brings enlightenment to the dark mountainous regions of the Caucasus.

Notwithstanding the entrenched prejudices that guide Ivanenko’s inquiry, his categories clarify how conflicting legal systems generate certain forms of crime. Hence his salience to the field of inquiry that has come to be called legal pluralism, and which I conceive here, more fluidly, as legal hybridity.⁹ In offering a systematic exposition of indigenous custom, Ivanenko was participating in a conversation that had long been underway among enlightened bureaucrats concerning the best way of pacifying the Caucasus. As Austin Jersild has documented, many late nineteenth-century ethnographers who were involved with Russia’s colonizing project were persuaded that the “administration of the multi-ethnic empire demanded a form of ethnographic knowledge that could facilitate progressive cultural change.”¹⁰ They sought to implement such change alternately through the suppression and reification of local legal practices. Like the bureaucrats and officers who preceded him, Ivanenko rejected the mountaineers’ “demoralizing cruelty” in favor of what he took to be the superior spiritual force of Russian civilization.

⁸ Cited in V. O. Bobrovnikov, “Obychai, shariat i reket v pis’mah ob ishkile iz Dagestana XVII–XIX vv,” *Istoriia i sovremennost* 1, 11 (2010): 78–98, 79. The definition of *ishkil* given here is that of Sergey Luguev, “Vardish: A Survival of the Old Männerbund in Dagestan,” *Iran and the Caucasus* 7, 1–2 (2003): 59–71, 59.

⁹ Legal pluralism is arguably the most promising area of inquiry at present in scholarship on the Islamic north Caucasus. In addition to recent works by Bobrovnikov and Kemper, cited in passim, see, for the West Caucasus, I. L. Babich, *Evolutsiia pravovoi kul’tury adygov, 1860–1990-e gody* (Moscow: Institut etnologii i antropologii im. N. N. Miklukho-Maklaia, 1999); *Pravovoi pluralizm na Severo-Zapadnom Kavkaze* (Moscow: RAN, 2000); and Walter Richmond, “Legal Pluralism in the Northwest Caucasus,” *Religion, State, Society* 32, 1 (2004): 59–73.

¹⁰ *Orientalism and Empire* (Montreal: McGill-Queen’s University Press, 2002), 77.

With its mixture of contempt for native legal norms and benevolence toward the mountaineers' benighted innocence, Ivanenko's exposition illustrates well the paradoxes that increasingly frame recent scholarship on legal pluralism in colonial contexts. Historian Lauren Benton, for example, argues, "The formal extension of legal jurisdiction in and of itself created a clear cultural boundary between the colonizers and the colonized by casting only one as the possessor of law, and of civility."¹¹ More dramatically, literary scholar Stephan Greenblatt claims that the legal regime instituted by the Spanish conquistadors in the New World turned Indians into outlaws and bandits situated "outside of all just order, apart from the settled human community and hence from the very condition of the virtuous life."¹² In Benton's words, "colonialism shaped a framework for the politics of legal pluralism," by introducing an order that both suppressed and transformed indigenous norms while generating new ethical values from within the colonial order.¹³ Drawing attention to how "coercion alone could not achieve either the political-economic or the moral-civilizational aims of the British Empire," political scientist Iza Hussin has recently proposed to read colonial-era transformations of Islamic law as instances of legal hybridity, whereby "legal orders interacted with each other" and actors within this plurality chose among legal possibilities" to fashion new socio-political orders.¹⁴ Hussin's work on legal hybridity in colonial Egypt, Malaysia, and India should be brought into conversation with similar work being done on formerly Soviet colonies, notably by Paolo Sartori and Vladimir Bobrovnikov for Central Asia and the Caucasus, respectively.¹⁵

Given that, as Hussin argues, the encounter between Islamic norms and British criminal codes "under conditions of colonial power" was far more complex than "the mere layering of one system over another, or the mixture of Islamic family codes and British criminal codes," it stands to reason that in the Russian as in the British Empire, new forms of criminality entered the world when indigenous and Islamic legal norms encountered colonial law and norms. In her ethnography of Islamic legal treatises and the records of Islamic courts in colonial-era Malaya, Egypt, and India, Hussin offers a series of closely textured accounts of such encounters.

¹¹ *Law and Colonial Cultures* (Cambridge: Cambridge University Press, 2002), 12.

¹² *Marvelous Possessions* (Chicago: University of Chicago Press, 1991), 67–68.

¹³ *Law and Colonial Cultures*, 2.

¹⁴ "The Politics of Islamic Law: Local Elites and Colonial Authority in Malaya, India and Egypt," PhD thesis, University of Washington, 2008, 29. The book version, titled "The Politics of Islamic Law," is forthcoming from University of Chicago Press.

¹⁵ Vladimir Bobrovnikov, *Musul'mane Severnogo Kavkaza* (Moscow: Vostochnaia literatura, 2002); and V. Bobrovnikov, ed., *Obychai i zakon v pis'mennykh pamiatnikakh Dagestana V—nachala XX v* (Moscow: Mardzhani, 2009); Paolo Sartori, "Constructing Colonial Legality in Russian Central Asia: On Guardianship," *Comparative Studies in Society and History* 56, 2 (2014) 419–47.

This essay draws on the scholarship of Bobrovnikov, Sartori, and other legal anthropologists of pre- and post-Soviet peripheries to lay groundwork for similar interventions in the study of the Islamic Caucasus. I pursue this agenda by outlining, in preliminary terms, a genealogy for *ijtihād*, the method of Islamic legal reasoning that transformed Daghestani intellectual life beginning in the seventeenth century, roughly coterminous with the advent of Daghestani early modernity.¹⁶ As with any genealogy, one must begin with the end, in this case the colonial dispensation, before arriving at the beginning: early modern Yemen, where Daghestani *ijtihād* appears to have first been conceived.

CRIMINALITY AS A COLONIAL CONSTRUCT

Internally various and never uniform, one of the most significant social institutions that emerged in the colonial-era Caucasus from the clash between indigenous norms and coercively imposed colonial law is rendered most frequently in English as “bandit,” and in Russian as *abrek*.¹⁷ Ivanenko’s article pivots around this form of criminality, which according to him is rooted in local custom. He points out how, in stark contrast to Russian colonial law, which bears the hallmarks of political modernity, indigenous custom, including the above-mentioned codex attributed to the Daghestani ruler Rustam Khan, “lacked a fixed order.” “Everything depended,” Ivanenko says by way of demonstrating the inferiority of mountaineer customs, “on the type of person [*lichnost*] who had decided to violate the norms of the community.” Outraged by the seeming absence of formal justice from indigenous legal systems, he states that, in the mountaineer societies of the Caucasus, “One could kill one’s father and not be punished for it, if the brother [of the victim] ... could forgive the murderer, while at the same time, the most trivial action was enough to ... provoke the general hatred of the community.”¹⁸

Svetlana Jacquesson has in fact discerned such a state of affairs among the nomads of Kyrgyzstan through her countrapuntal readings of colonial statutory laws and colonial ethnography. Pace Ivanenko, she demonstrates that in

¹⁶ While a full etiology of Daghestani modernity is beyond this article’s scope, my chronology follows the history of manuscript production delineated by Amri Shikhsaidov, who notes that the first influx of Arabic manuscripts to Daghestan was followed in the sixteenth century by a period of localization, during which “we observe a huge growth in the number of [Islamic] manuscripts due to the intensive activities of Daghestani copyists” and the increasing sophistication of Daghestani intellectual life. See his, “The Manuscript Collections in Daghestan,” in Moshe Ganner, ed., “Written Culture in Daghestan” (Helsinki: Academia Scientiarum Fennica, in press). This shift from manuscripts imported from abroad to the local production and reproduction of Islamic knowledge is one possible beginning for Daghestan early modernity. Also see note 73, below.

¹⁷ Bobrovnikov, *Musul'mane*, 16–97; and Rebecca Gould, “Transgressive Sanctity: The Abrek in Chechen Culture,” *Kritika* 8, 2: 271–306.

¹⁸ Ivanenko, “Razlad,” 224.

contexts where, instead of punishing murder, “blood money was paid or ... there was a pact to maintain silence [about a murder] before the Russian authorities,” this failure of justice was seen locally as “the consequences of ruptured custom—or ... of a shattered ‘native spirit.’”¹⁹ While colonial legal officials and ethnographers like Ivanenko blamed the arbitrariness of local justice “on a lack of a ‘civic spirit’ among the nomads,” the nomads themselves maintained that the colonial order had “pitted people against one another, against custom, and even against law.” Hence, the colonial period is collectively remembered by the nomads of Tian Shan (Kyrgyzstan) as “the time of dishonor.”²⁰

After he has uncovered what he regards as the internal inconsistencies of indigenous law, Ivanenko invokes the *abrek* as an archetype of the mountaineer’s arbitrary justice made manifest. “Banishment [*izgnanie*],” he stipulates, “acquired juridical form in the [figure of the] exile [*izgnannik*],” thereby assimilating the *abrek* to colonial modernity. While he acknowledges the *abrek*’s internal diversity as a social institution, stating, “the *abrek*’s fate varied” according to circumstance, he emphasizes that the *abrek* was prone to become a criminal (*razboinik*). On the basis of the proliferation of the *abrek*-as-criminal, Ivanenko further elaborates on the limitations he perceives in indigenous forms of governance: “It is easy to see that this lack [intrinsic to indigenous governance] can be explained by the same absence of coercive power [*primuditel’naia vlast’*] which could have protected society from the criminal [*prestupnik*], banished by his native community.”²¹ His diagnosis of the lacks intrinsic to indigenous custom and the appropriate remedy for them is remarkable, and not merely because it reads so transparently as an apologia for colonial rule; even more striking is his conviction that a form of governance structured by coercion is the best way to regulate social life and control criminal behavior. This conviction casts an interesting shadow over the colonial refashioning of Enlightenment conceptions of natural law.

Predictably, Ivanenko concludes the first installment of his article by paying homage to the colonial administration in realizing his ideal form of governance. This ideal is saturated with coercive power, and capable of instilling terror in its citizens. “With the advent of Russian sovereignty [*vladichestva*],” he concludes, “the Caucasus acquired an all-powerful, coercive, and well-organized modality of power, which, bringing one tribe after the other into a general governmental unity [*gosudarstvennyi soiuz*], benefits from indigenous custom, while avoiding all of its drawbacks.”²² Beyond its vulnerability to postcolonial critique, Ivanenko’s account of indigenous law (a term generally

¹⁹ “The Time of Dishonour: Land and Murder under Colonial Rule in the Tian Shan,” *Journal of the Economic and Social History of the Orient* 55 (2012): 664–87, 666, 683.

²⁰ *Ibid.*, 684.

²¹ Ivanenko, “Razlad,” 224.

²² *Ibid.*

translated in Russian colonial discourse by “custom [*obychai*]”) calls into question the colonial state’s understanding of law, and indeed governmentality as such, in modern imperial bureaucracies.

One of the most eloquent critiques of the kind of colonial governmentality defended by Ivanenko has been voiced by Iza Hussin in her engagements with the normative legal thinking of British colonial officials and their contemporary descendants among the Islamists of Egypt, Malaya, and India. “Both the advocates of ‘rule of law’ on the Western model and ‘*shari‘ah*’ on the Islamic model see law as a tangible deliverable of policy,” she writes, even when they also regard law “as the solution to problems of political order and social instability.”²³ Countering both colonial and formalist Islamist understandings of law as a regulating instrument, Hussin insists that law, whether Islamic, secular, colonial, or postcolonial, has “political content and negotiable meaning” that one cannot grasp without taking into consideration “the project of legitimization in which the law is always involved [and] the threat of violence behind that project.”²⁴

COLONIAL CRITIQUES OF INDIGENOUS LAW

While Ivanenko understands the mountaineers’ indigenous law as a set of primitive customs superseded by the colonial legal order, scholars more recently have tended to study customary law itself as a construct of colonialism. Paolo Sartori, for one, has demonstrated that efforts by the Russian administration in Central Asia to “distinguish customary law from Islamic law,” had the side-effect of bringing about the disappearance of “‘*‘ādāt*’ as a juristic notion ... from *shari‘a* court protocols.”²⁵ A similar process can be observed in the Caucasus, where ‘*‘ādāt*’ only begins to be conceived as “customary law” in colonial modernity. Prior to this reification of ‘*‘ādāt*’, Islamic jurists framed their adjudication of *shari‘a* with a view to its implications for ‘*‘ādāt*’. The interdependency of *shari‘a* and ‘*‘ādāt*’ is amply on display in the genre of Daghestani legal texts called *ittifāqāt* (sing. *ittifāq*) that have recently been the subject of several important scholarly studies.²⁶ These texts, dating primarily to the eighteenth and first half of the nineteenth centuries, consist of agreements drawn up by mountaineer communities (*jamā‘āt*) to regulate how its members propose to live together with each other and with their neighbors.

Performative rather than normative in their rhetorical structure, *ittifāqāt* typically open by declaring a forward-looking temporal orientation, with

²³ “Politics of Islamic Law,” 235.

²⁴ Ibid., 235, 237.

²⁵ “Murder in Manghishlaq: Notes on an Instance of Application of Qazaq Customary Law in Khiva (1895),” *Der Islam* 88, 2 (2012): 217–57, 233.

²⁶ Most recently, see the rich collection of *ittifāqāt* reproduced in Bobrovnikov, ed., *Obychai i zakon*, as well as other studies by Bobrovnikov and by Kemper cited *inter alia*.

formulas such as “this is an explanation and argument for the future.”²⁷ Although they are our most important extant source for mountaineer *‘ādāt*, Bobrovnikov importantly disambiguates *ittifāqāt* from *‘ādāt* codices. *Ittifāqāt* are generated from the encounter between *‘ādāt* and *sharī‘a*. Themselves products of the legal modernity, *ittifāqāt* are not unmediated expressions of indigenous customs, and are best understood as “examples of local communal law.”²⁸ The genre’s name, *ittifāq*, derives from a verb meaning “they came to an agreement.”²⁹ As Bobrovnikov notes, this formula opened the laws that were passed at mountaineer gatherings. In keeping with one *ittifāq*’s stipulation that it consists of “treaties and resolutions [*‘uhūd wa-mawāthiq*] concluded ... from the most ancient times and written down according to their agreements,” this genre of legal discourse is best understood as a modern recension of ancient beliefs and norms, one that has been shaped by technological and political modernity.³⁰

One *ittifāq* from the Andalal confederacy is particularly revealing with respect to the relationship it encodes between *sharī‘a* and *‘ādāt*. In cases where one party to a dispute insists on resolving the argument through *sharī‘a* and the other party insists on resolving it through *‘ādāt*, this document stipulates that *sharī‘a* regulations will prevail.³¹ This suggests that in nineteenth-century Andalal, even when *sharī‘a* had precedence over *‘ādāt*, both were considered legitimate sources for regulating social life. Rather than regarding *‘ādāt* as an unmodified holdover from the pre-Islamic period and *sharī‘a* as its religiously sanctioned replacement, it is more productive to concentrate on their dialogic (which does not mean equivalent) relation in these precolonial and yet to be fully colonized contexts. In the context of this relation, *‘ādāt* and *sharī‘a* are appropriate for different situations, and both are constitutive of legal plurality.

Even though *‘ādāt* incorporates pre-Islamic beliefs, extant *‘ādāt* codices are hardly pre-Islamic in any meaningful sense; they have evolved alongside *sharī‘a* and come to permeate the everyday lives of millions of Muslims for centuries. Anthropologist Clifford Geertz distinguishes *‘ādāt* from its near equivalent *‘urf* on geographical grounds, noting the relative prominence of *‘ādāt* over *‘urf* on the peripheries of the Islamic world and the reverse relation in central Islam territories. As he notes, *‘ādāt*’s trilateral root, signifying “to

²⁷ For analyses of formulaic structure, see Bobrovnikov, *Musul’mane*, 119–20; and Amri Shikh-saidov, *Epigraficheskie pamiatniki Dagestana X–XVII vv, kak istoricheskii istochnik* (Moscow: Nauka, 1984), 362. The *‘ādāt* codex of Tsekob (in Bobrovnikov, ed., *Obychai i zakon* 1: 189–94) is particularly rich in examples of futuristic and performative statements.

²⁸ Vladimir Bobrovnikov, “Ittifag Agreements in Daghestan in the Eighteenth–Nineteenth Centuries,” *Manuscripta Orientalia* 8, 4 (2002): 20–27, 21.

²⁹ *Ibid.*, 21.

³⁰ “Andalalskie adaty,” M. D. Saidov and A.R. Navruzov, trans., in Bobrovnikov, ed., *Obychai i zakon* 1: 174 (Russian); 180 (Arabic).

³¹ “Andalalskie adaty,” in Bobrovnikov, ed., *Obychai i zakon* 1: 178.

return,” evokes the fluid process through which indigenous law was constituted and reconstituted.³²

Because *‘ādāt* regulations were regarded as “voluntaristic acts of collective decision” and “the community and its representatives ... continuously fulfilled legislative functions,” Kemper argues that *‘ādāt* as a legal institution is more accurately conceived of as “communal law” than as “customary law,” less, that is, as a static, ossified tradition than as a means of organizing social life that is subject to perpetual modification.³³ By emphasizing the historical diversity of Daghestan’s many indigenous legal systems that were codified and recalibrated by Islamic law, Kemper denominates precolonial Daghestani *‘ādāt* as “communal,” because it was “laid down by the community in distinct historical acts.”³⁴ Only in the colonial period did *‘ādāt* come to be fully homogenized with custom and disconnected from the community that participated in its creation and from which it derived its legitimacy. Through this process, Russian ethnographers and colonial officials transformed the law of the community “into customary law, that is, into a set of regulations that allegedly had their origin in the ancient past, not in the living community.”³⁵

Colonial ethnography was one of the major instruments for the codification of *‘ādāt* as custom. Over the course of many monographs, serial publications, and *‘ādāt* compilations, linguists, ethnographers, and colonial officials such as Ivanenko, P. K. Uslar, and Maksim Kovalevskii homogenized the internally diverse *‘ādāt* corpus into a single system that could be assimilated to, and ultimately absorbed by the colonial legal order. In one of the most influential works of colonial-era ethnography, “Law and Custom in the Caucasus,” Maksim M. Kovalevskii in 1890 maintained that the many different peoples of the Caucasus were united by a common kinship organization that caused their indigenous legal systems to constitute a homogenous whole that was immune to change over time.³⁶ Kemper appropriately characterizes Kovalevskii’s approach as the treatment of “*‘ādāt* as living fossils.”³⁷

³² *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983), 209, n. 64. While the distinction between *‘ādāt* and *‘urf* requires more discussion, note Gideon Libson’s argument that “jurists ... did not distinguish between these two terms” in the classical period. “On the Development of Custom as a Source of Law in Islamic Law,” *Islamic Law and Society* 4, 2 [1997]: 131–55, 133, n. 4). Al-Ghazālī states the relationship memorably, defining *‘urf* as a component of *‘ādā*, which, inasmuch as it references the “custom” of God, constitutes an Islamic version of natural law. See Wael B. Hallaq, *Law and Legal Theory in Classical and Medieval Islam* (Aldershot: Ashgate, 1994), 343. Baber Johansen further clarifies this distinction by defining *‘ādā* as “normative custom” and *‘urf* as “social practice” (“Casuistry: Between Legal Concept and Social Praxis,” *Islamic Law and Society* 2, 2 [1995]: 135–56, 152).

³³ “Communal Agreements (*Ittifaqat*) and *‘Adat*-Books from Daghestani Villages and Confederacies (18th–19th Centuries),” *Der Islam* 81 (2004): 115–51, 151.

³⁴ *Ibid.*, 117.

³⁵ Kemper, “Adat against Shari‘a,” 172.

³⁶ *Zakon i obychai na Kavkaze*, 2 vols. (Moscow: Tip. A. I. Mamontova, 1890).

³⁷ “Adat against Shari‘a,” 164.

Twenty years prior to Kovalevskii's magnum opus on the laws and customs of the Caucasus peoples, the Tbilisi-based serial publication *Sbornik svedenii o Kavkazskikh gortsakh* (Collection of knowledge about the Caucasus mountaineers, henceforth *SSKG*) featured a special section at the end of many of its volumes entitled "Of Mountaineer Criminality." Each of *SSKG*'s special sections on mountaineer crime was prefaced by a lesson addressed to readers by the often-anonymous editor concerning the challenges of implementing modern European law among the Caucasus mountaineers. As the editors explained, *SSKG*'s chronicles of mountaineer criminality were intended to inform readers about the difficulties the colonial administration faced in managing the mountaineers' "criminal tendencies [*prestupnoi voli*]." ³⁸ "Short stories rather than statistical compilations in the modern sense," these vignettes of mountaineer criminality "were published without editorial comment, as if to suggest that the moral of the story was ... obvious to the educated reader." ³⁹

SSKG's editors did, however, affirm to their readers that "from a plethora of criminal acts among the mountaineer population" they had selected "the most characteristic" as well as those that manifested the most extreme forms of criminality. ⁴⁰ In a later installment of this series, the editor V. V. Tsvetkov maintained (somewhat against the grain of a previous pronouncement by different editors) that only the most "characteristic" crimes had been included in his chronicle. He claimed that he had exerted himself to include crimes that "shine a bright light on the mountaineers' familial and kinship [*rodstvennoi*] ties." ⁴¹ *SSKG*'s goals are clear in the conspicuous role assigned to *ʿādāt* in its chronicles of mountaineer crime. Tsvetkov summarized his tabulations of mountaineer criminal activity for every year in a chart that listed which crimes were adjudicated according to *ʿādāt* and which were committed under the influence of alcohol or in the heat of an argument. ⁴² Although he did not specify the logic underwriting his categories, his tabulation implicitly associates *ʿādāt* with the absence of reason.

Sharīʿa notably figures nowhere in these colonial accounts of mountaineer criminality. Indeed, in *SSKG*'s first issue, which offered a prototype of the crime logs that filled subsequent volumes, A. V. Komarov complained that *ʿādāt* had become "a source of much confusion and debate." ⁴³ After noting the recent decline in the number of cases adjudicated by *ʿādāt*, he proudly

³⁸ "Iz gorskoi kriminalistiki," *SSKG*, vol. 3 (1870): 1 (each article in these volumes is separately paginated).

³⁹ Jersild, *Orientalism and Empire*, 99. Based on his work in the Georgian National Historical Archive (Tbilisi), Jersild establishes that *SSKG*'s chronicles of mountaineer criminality represent near-verbatim reproductions of the Russian administration's court records (196, n. 62).

⁴⁰ "Iz gorskoi kriminalistiki," *SSKG*, vol. 3, 1.

⁴¹ "Iz gorskoi kriminalistiki," *SSKG*, vol. 8 (1875): 1 (317 for this volume; the only one with overall pagination).

⁴² *Ibid.*, 340.

⁴³ "Aday i sudoproizvodstvo po nim," *Sbornik svedenii o Kavkazskikh gortsakh* 1 (1868): 58.

concluded that his data offered the “surest demonstration of the continually increasing faith and respect among the mountaineers for the [colonial] legal system.” According to Komarov, the mountaineers’ acceptance of the colonial order was effectively weakening mountaineer resistance to Russian rule. Colonial law was helping to bring about the mountaineers’ “full and complete submission to our power.”⁴⁴ The normalization of colonial governance was thus understood to entail the replacement of *‘ādāt* by Russian legal norms. As the colonial authorities “adjusted” *‘ādāt* to modernity by “criminalising practices deemed ‘primitive’ or dangerous,” the gap between indigenous and colonial legal norms widened to the point of being unbreachable.⁴⁵ *‘Ādāt* was reified as it merged in the colonial consciousness with *sharī‘a* on one hand and pre-Islamic traditions on the other.

In retrospect, the limitations of Komarov’s thinking are obvious, and likewise Ivanenko’s and Tsvetkov’s. Even more damaging than their condescending attitudes toward *‘ādāt* as an artifact of a prehistorical world untouched by modernity is their near-complete neglect of Islamic law as a living source of indigenous jurisprudence. Our extant sources demonstrate in amplitude that *sharī‘a* was as significant a source of normative law for the Caucasus mountaineers as was *‘ādāt*. Far from receding from the horizon with the onset of modernity, the political salience of *sharī‘a* (and *fiqh* specifically) intensified with the colonial confrontation.

Mindful of the profound role played by the many varieties of Islamic law in shaping the meanings of modernity in the Caucasus and across the Islamic world, the rest of this essay considers the challenge to *‘ādāt* from another perspective. I engage the extant writings of Islamic scholars (*‘ulamā’*) and jurists (*fuqahā’*) who dedicated themselves to eradicating the uncritical adherence to ancestral values that they took to be both emblematic of *‘ādāt* and excessive among their contemporaries. The *‘ulamā’* of the *sharī‘a* movement shared with their colonial counterparts a suspicion toward their fellow mountaineers’ uncritical reverence for past practices.⁴⁶ Yet these two groups functioned in seeming oblivion of each other’s anti-*‘ādāt* discourse, even when they both participated in and promulgated new ways of relating to past social norms, which is to say new forms, meanings, and temporalities for political modernity.

⁴⁴ Ibid., 64.

⁴⁵ Paolo Sartori and Ido Shahrar, “Legal Pluralism in Muslim-Majority Colonies: Mapping the Terrain,” *Journal of the Economic and Social History of the Orient* 55 (2012): 637–63, 642.

⁴⁶ By “*sharī‘a* movement” I refer to the anticolonial jihad that was inaugurated in Daghestan in the early decades of the nineteenth century, and which, particularly under the leadership of Imām Shāmīl (1797–1871), was accompanied by a more systematized (and paradigmatically modern) attempt than Daghestan had yet seen to base social life on the principles of Islamic jurisprudence. For a magisterial study of this movement, see Michael Kemper, *Herrschaft, Recht und Islam in Daghestan* (Wiesbaden: Ludwig Reichert Verlag, 2005).

While exploring the complex positions of the Daghestani *‘ulamā’* with respect to *‘ādāt*, I show how *sharī‘a*, much like *‘ādāt*, is not the ossified body of immutable law that it has been treated as since the advent of colonial governance. Far from requiring colonial law to attain to legal pluralism, *sharī‘a* and *‘ādāt* interfaced within an already existing legal plurality long before colonial modernity (albeit one that was conflictual when *‘ādāt* was critiqued by the *fuqahā’*, as in examples below). That in colonial modernity this already operative plurality morphed into what Paolo Sartori calls a “tripartite encounter” among “*sharī‘a*, customary law, and [colonial] statutory law,” does not detract from the legal plurality that structured political life in Muslim societies before the colonial dispensation, as it also inflected relations between the mountaineers and their *‘ulamā’* during the colonial period.⁴⁷

IJTIHĀD AGAINST ‘ĀDĀT

While colonial officials identified the sources of mountaineer criminality in the prevalence of *‘ādāt*, Islamic authors had long been making similar deductions. Without borrowing from, or even interacting with each other, and due to profoundly divergent causes, colonial and Islamic sources mirror each other in terms of their suspicion toward mountaineer *‘ādāt*. A case in point is Ghāzī Muḥammad (1795–1832), the “renewer of the faith [*mujaddid al-dīn*]” and initiator of the jihad against Russian occupation.⁴⁸ In his treatise, “The Clear Evidence for the Heresy of Those Who Administer Customary Law in Daghestan,” Ghāzī Muḥammad critiques mountaineer customs in terms that resonate with the objections later advanced by Ivanenko, Komarov, and Tsvetkov.⁴⁹ Whereas Ivanenko inveighed against customary punishments that were levied according to the “personalities” of those who had violated social laws,⁵⁰ Ghāzī Muḥammad complains that, when it came to deciding matters of importance to all members of the community, “The leaders judge according to general and disorganized customary law; if they do not find a solution in the *‘urf* [customary law], they simply judge according to their own opinion [*ra’y*], to the benefit of the side they want to win, and against the side they want to lose.”⁵¹ Although his sense of community differs radically from Ivanenko’s,

⁴⁷ Sartori and Shahar, “Legal Pluralism,” 649.

⁴⁸ For Ghāzī Muḥammad’s title as *mujaddid al-dīn*, see *Āthār al-Yarāghī* (Temir-Khan Shura 1910; cited in Kemper, *Herrschaft*, 219).

⁴⁹ Ghāzī Muḥammad’s treatise (original title: *Bāhir al-burhān li-irtidād ‘urafā’ Dāghistān*) is discussed most thoroughly in Kemper, *Herrschaft*, 219–24. Also see Anna Zelkina, *In Quest of God and Freedom* (New York: New York University Press, 2000), 138–39. I have not seen the unpublished Arabic original of the treatise, held in Daghestan Institute for History, Archeology, and Ethnography (fond 1, opis’ 1, delo 388, inv. no. 2296).

⁵⁰ Ghāzī Muḥammad, *Bāhir al-burhān li-irtidād ‘urafā’ Dāghistān*, 224 (Kemper’s translation).

⁵¹ Michael Kemper, “Ghazi Muhammad’s Treatise against Daghestani Customary Law,” in Moshe Gammer, ed., *Islam and Sufism in Daghestan* (Helsinki: Academia Scientiarum Fennica, 2009), 95 (I have made slight modifications to Kemper’s translation to preserve clarity of

Ghāzī Muḥammad concurs with him in regarding indigenous law as a source of delusion. *ʿurf*, Ghāzī Muḥammad’s object of critique, is an Islamic legal construct, but so too is the colonial concept of custom a construct of a legal ideology, in this case one that aims to naturalize and legitimate imperial rule.

Both Ivanenko and Ghāzī Muḥammad make their case against *ʿādāt* on the grounds of its presumed arbitrariness, while each conceives arbitrariness on different grounds. Ghāzī Muḥammad complains that those who adjudicate by means of *ʿādāt* “accept a bribe from one or the other, or from both parties, believing [they have] achieved what nobody ever achieved before.”⁵² These commentators perceive a lack of justice, understood by both as the reasoned application of formal principles, in the arbitrary manifestations of indigenous law. Both see the uncritical reverence for tradition as the primary flaw of *ʿādāt/ʿurf*. Emphasizing the aspect of *ʿurf* that posed a challenge to jurists’ authority, Ghāzī Muḥammad complains that Daghestanis who elevate *ʿurf* above *sharīʿa* “take their forefathers [*aba’ahum*] as their models and disregard God.”⁵³ Ivanenko would advance a parallel critique, with the difference that he substitutes reason for Ghāzī Muḥammad’s God.

In his study of Daghestan’s anticolonial jihad, Kemper adduces several figures as predecessors to what he terms the nineteenth-century “*sharīʿa* movement” that resulted in, among other things, the decline in prestige of *ʿādāt*. Arguably the most eminent among these predecessors was the peripatetic Daghestani scholar Muḥammad ibn Mūsā al-Quduqī (1652–1708), a pioneering figure in Daghestani intellectual history, and author of, *inter alia*, the textbook on Arabic grammar most widely used in Daghestani *madrasas*. Long before colonial rule began in Daghestan, al-Quduqī insisted, “The entire legal life of Muslims should be determined by Islamic law.”⁵⁴ Alongside his prolific writings on subjects ranging from grammar to logic to the names of God, al-Quduqī left an additional legacy through his voluminous and learned glosses (*hāshīya*) in Arabic manuscripts.⁵⁵ The signature “Quduqī,” on these manuscripts attests to his manifold interventions within jurisprudence, theology, logic, grammar, and rhetoric.

English syntax). Future references to Kemper’s translation are given parenthetically. Given the Shāfiʿī orientation of traditional Daghestani jurisprudence, it is worth noting that the Shāfiʿī school was open to the use of subjective legal reasoning, which in *uṣūl al-fiqh* is referred to as *ra’y*. See Christopher Melchert, *The Formation of the Sunni Schools of Law: 9th–10th Centuries C.E.* (Leiden: Brill, 1997), 87–115. Ghāzī Muḥammad’s opposition to *ra’y* was therefore an innovation within his own tradition. For *ʿurf*, see note 32, above.

⁵² In Kemper, “Ghazi Muhammad’s Treatise,” 95.

⁵³ *Ibid.*

⁵⁴ Kemper, *Herrschaft*, 354, for this citation and the details that follow.

⁵⁵ Ḥasan al-Alqadārī, *Āthār-i Dāghistān* (St. Petersburg: n.p., 1312/1894–5), 232. I thank Vladimir Bobrovnikov (Russian Academy of Sciences) for furnishing a scan of this edition.

The Soviet Daghestani intellectual °Alī al-Ghumūqī (1878–1943) described al-Quduqī as “the first among the Daghestani °ulamā to awaken from the sleep of *taqlīd*” and to insist that his fellow scholars “distinguish between truth and falsehood” on the basis of “reason and logic.”⁵⁶ In European scholarship, Kemper was the first to draw attention to Ghāzī Muḥammad’s debt, although seventy years earlier had identified al-Quduqī’s *fatwās* as “the primary source from which [the three imams of the anticolonial period] Ghāzī Muḥammad, Ḥamza, and Shāmīl, derived their conceptions of [Islamic] rule.”⁵⁷ Ghāzī Muḥammad acknowledges his debt openly in his treatise, including in a lengthy citation from al-Quduqī that he claims to have found in a manuscript owned by his grandfather.⁵⁸

At the dawn of a new era in Daghestani learning, al-Quduqī traveled across Egypt, the Hijaz, and Yemen and studied with the sheykhs of all these regions. He found his true teacher, however, in the controversial Yemeni Sheykh Ṣāliḥ al-Maqbalī (1638–1697).⁵⁹ Well-known, and reviled, for his broadminded approach to Islamic theology, and influential in subsequent Yemeni debates concerning the sources of legal authority, Sheykh Ṣāliḥ was the author of, among other works, *Al-°ālam al-shāmikh* (The high banner), a text that earned him accusations of heresy (*zandaqa*) as soon as it appeared.⁶⁰ This work was particularly significant for al-Quduqī, who copied it and others by Sheykh Ṣāliḥ and donated them to local Daghestani *waqfs* (pious endowments), thereby contributing materially and intellectually to the spread of early modern Islamic learning throughout Daghestan.⁶¹

Toward the end of his life, as was to occur later with Ghāzī Muḥammad, al-Quduqī grew frustrated with his fellow Daghestanis. In his view, they had abandoned the teachings of Allah through their uncritical adherence to

⁵⁶ °Alī al-Ghumūqī, “Tarājim °ulamā-yi Dāghistān,” Rukopisnii fond, Daghestan Institute for History, Archeology, and Ethnography, F. 25; Op. 1; D.1; l. 17. I cite here from the Russian translation of the unpublished Arabic manuscript (not to be confused with the Turkic language text of the same name) in Makhach Musaev, “Materialyi k biografii mukhammadā, syna musy al-Kudukī,” *Vestnik Instituta IAE* 3 (2014): 62.

⁵⁷ “Ghazi Muhammad’s treatise,” 91; *Herrschaft*, 222, 355.

⁵⁸ In Kemper, “Ghazi Muhammad’s Treatise,” 98,

⁵⁹ The only book-length study on al-Maqbalī known to me is Aḥmad °Abd al-°Azīz Aḥmad al-Mulaykī, *Al-Shaykh Ṣāliḥ al-Maqbalī: ḥayātuḥu wa-fikruḥu* (Ṣana°a: Wizārat al-Thaqāfah wa-al-Siyāḥah, 2004). Also see the brief discussion in Basheer M. Nafi, “Taṣawwuf and Reform in Pre-Modern Islamic Culture: In Search of Ibrāhīm al-Kūrānī,” *Die Welt des Islams* 42, 3 (2002): 301–55, 327–28.

⁶⁰ Ṣāliḥ ibn Mahdī al-Maqbalī, *Al-°ālam al-shāmikh fī tafāṭīl al-ḥaqq °alā al-°abā’ wa-al-mashāyikh* [The high banner on the superiority of truth to the ancestors and the forefathers] (Ṣana°a: al-Maktaba al-Yamanīyah, 1985). This work’s title is sometimes given (as in al-Shawkānī [note 70, below], Kemper, and Krachkovskii) as *Al-°ālam al-shāmikh fī radd °alā al-°abā’ wa-al-mashāyikh*, and as *Al-°ālam al-shāmikh fī ṭihār al-ḥaqq °alā al-°abā’ wa-al-mashāyikh* (al-°Amrī, 166–67).

⁶¹ Patimat Ibrahimova, “Inscriptions on Manuscript Margins,” in Moshe Gammer, ed., *Written Culture in Daghestan* (Helsinki: Academia Scientiarum Fennica, 2014), 131.

indigenous law (*urf*), their idolatry, and their failure to abide by Islamic law.⁶² In the fashion of Sheykh Ṣāliḥ, who had immigrated to Mecca with his family in the wake of polemical disputes with other Yemenites, al-Quduqī publicly denounced his fellow Daghestanis and moved to Syria. He died in Aleppo, where he left behind three hundred manuscripts copied in his own hand as a *waqf* to the local mosque.⁶³ While many of the manuscripts al-Quduqī brought back from Yemen circulated across Daghestani mosques and madrasas, we can only speculate about the identities and fates of the three hundred manuscripts that are yet to be recovered from the Aleppo *waqf*.

Notwithstanding their intellectual affiliations, al-Quduqī and Ghāzī Muḥammad had significantly different understandings of Islamic jurisprudence. Ghāzī Muḥammad explicitly opposed scholars who, in his words, “judge according to their own opinion [*ra’y*].” Al-Quduqī, while he distanced himself from scholars who relied on their own opinions to reach juridical decisions, was an active proponent of *ijtihād*, a form of Islamic legal reasoning that authorizes the believer to interpret Islamic law through personal effort (*jihad*) rather than with deference to the canonical schools (*madhāhib*) of Islamic legal thought.⁶⁴ Both shared an agenda to rethink the foundations of Islamic authority, but their methods diverged, with Ghāzī Muḥammad opposing himself to *‘ādāt* without explicitly engaging *ijtihād*, and al-Quduqī constructing a lineage between himself and the formidable challenge to *madhhab*-based legal reasoning that, during the seventeenth century, originated primarily in Yemen.

In its original meaning, *ijtihād* is associated particularly with the school of Imām al-Shāfi‘ī (d. 820), for whom it referred to one among many hermeneutical principles, including *qiyās* (analogy) and *istidlāl* (inference), for interpreting *ḥadīth* (sayings ascribed to Muhammad the prophet and to other early Muslims) and especially the Qur’ān. As al-Shāfi‘ī explained in his *Risāla* (considered the first systematic exposition of Islamic legal theory), *ijtihād* is particularly appropriate when “the relevance of that particular [sacred] text is attenuated, and where no other such text seems directly apposite.”⁶⁵

⁶² *Die Islamgelehrten Daghestans und ihre arabischen Werke: Nadīr ad-Durgilīs (st. 1935) Nuzhat al-adhhān fī tarāḡīm ‘ulamā’ Dāghistān*, Michael Kemper and Amri R. Shixsaidov, eds. (Berlin: Klaus Schwarz Verlag, 2004), 16 (Arabic). The Arabic manuscript is reproduced in the edition by A. R. Shikhsaidov, M. Kemper, and A. K. Bustanov (Moscow: Mardzhani, 2012); see p. 25 for this quote. Al-Alqadārī summarizes Al-Quduqī’s life and accomplishments in his *Athār-i Dāghistān*, 232–33.

⁶³ In addition to al-Durgilī, these details are recounted in Shu‘ayb ibn Idrīs al-Bākinī (d. 1912), *Ṭabaqāt al-Khwājagān al-Naqshbandīyah* (Damascus: Dār al-Nu‘mān lil-‘Ulūm, 2003), 399.

⁶⁴ Sunni legal thought was codified into four schools—Hanafi, Shāfi‘ī, Maliki, and Hanbali—each named after their founders, during the early ‘Abbāsīd period. A fifth, Shi‘a school, native to Yemen and known as Zaydī (after the Prophet’s grandson Zayd bin ‘Alī), developed a parallel discourse on the nature of Islamic authority that was crucial to the early modern turn to *ijtihād* and rejection of *taqlīd* (see below).

⁶⁵ Joseph Lowry, *Early Islamic Legal Theory: The Risāla of Muḥammad Ibn Idrīs al-Shāfi‘ī* (Leiden: Brill, 2007), 144.

Ijtihād is often contrasted to *taqlīd*, defined by the fourteenth-century Iranian theologian ʿAlī ibn Muḥammad al-Jurjānī as the acceptance of a legal opinion “without proof or evidence [*bilā hijja wa-lā dalīl*].” *Ijtihād* licenses the jurist to think independently, albeit within the framework of accepted Islamic legal opinion, by deriving his opinion concerning a legal rule “from the bases of the law.”⁶⁶ Basing his definition on that of the theologian and Shāfiʿī jurist Sayf al-Dīn al-Āmidī (1156–1233), Bernard Weiss defines *ijtihād* as a “total expenditure of effort in the seeking of an opinion as to what constitutes a probable rule of divine law relative to a particular case under consideration.”⁶⁷

While *ijtihād* has a lengthy genealogy in classical Islamic jurisprudence, in early modernity, and above all in Yemen, a new, more systematic, and philosophically more ambitious conception of *ijtihād* was developed “by jurists from a loose application of personal opinion to a comparatively strictly defined method based on analogic reasoning.”⁶⁸ This new *ijtihād* has shown that “few Islamic concepts have undergone as radical a semantic shift over the past couple of centuries as *ijtihād*.”⁶⁹ The *ijtihād* of medieval scholars such as al-Shāfiʿī, al-Āmidī, and al-Jurjānī importantly conditioned, but could not predetermine, the *ijtihād* of later the jurists, theologians, and philosophers who, in shaping Daghestan’s Islamic modernity, influenced the trajectory of anticolonial resistance.

European Orientalists famously believed that *ijtihād* in the classical sense was suppressed after the first flowering of Islamic jurisprudence in the first centuries of Islam.⁷⁰ *Ijtihād* only returned to Islamic jurisprudence—so runs this narrative of the closing of the gate of *ijtihād* (*al-insidād bāb al-ijtihād*)—when modernizing reformers such as the Yemeni al-Shawkānī (1760–1834) and, later, Rashīd Riḍā of Egypt (1865–1935) undertook to demonstrate the equality of all believers, to reject *taqlīd*, and insisted that every interpreter of the law must inquire into its textual basis and reject claims based exclusively on authority.⁷¹ *Ijtihād* is in many respects “the subject of two

⁶⁶ *Al-Taʿrīfāt*, Gustav Flügel, ed. (Lipsiae: Vogel, 1845), 67 (on *taqlīd*), 8 (on *ijtihād*).

⁶⁷ *The Search for God’s Law* (Salt Lake City: University of Utah Press, 1992), 683.

⁶⁸ Brinkley Messick, “The Mufti, the Text and the World: Legal Interpretation in Yemen,” *Man, New Series* 21, 1 (1986): 102–19, 112.

⁶⁹ Scott C. Lucas, “Abu Bakr Ibn Al-Mundhir, Amputation, and the Art of Ijtihād,” *International Journal of Middle East Studies* 39, 3 (2007): 351–68, 357.

⁷⁰ *Loci classici* for this view include Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1964), 70–71; Noel Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 81; and Fazlur Rahman, *Islam* (Chicago: University of Chicago Press, 1966), 78. All of these claims are famously and decisively contested in Wael B. Hallaq, “Was the Gate of Ijtihad Closed?” *International Journal of Middle East Studies* 16, 1 (1984): 3–41.

⁷¹ Muḥammad ibn ʿAlī al-Shawkānī, *Qawl al-mufīd fī adillat al-ijtihād wa-al-taqlīd* (Cairo: Dār al-Maṭbaʿah al-Salafiyyah wa-maktabatuhā, 1394/1974), esp. 7.

different discourses,”⁷² the first internal to Islamic thought and dating back to al-Shāfiʿī’s *Risāla*, and the second a product of European scholarly inquiry and inextricably bound up with European understandings of the geography and genealogy of modernity. European Orientalism and Islamic narratives of modernity converge in their shared conviction that early modern experience entails a rupture with a classical past.⁷³

Al-Shawkānī holds a special position in the history of Islamic thought in Daghestan, less for what he did than for the memories and encounters he transcribed. His biographical dictionary, *al-Badr al-tālīʿ bi-maḥāsini man baʿda al-qarn al-sābiʿ* (The rising moon, adorned by those who came after the seventh century) was written, as Hallaq puts it, to show “that after the seventh Islamic century [the thirteenth–fourteenth centuries CE], *mujtahids* [skilled interpreters of Islamic law] continued to exist.”⁷⁴ One striking entry is devoted to al-Quduqī’s teacher and al-Shawkānī’s Yemeni predecessor in the art of *ijtihād*, Sheykh Ṣāliḥ al-Maqbalī, who al-Shawkānī celebrates for his deep learning and his independent approach to tradition. “Rarely does the scholar become immersed in [Sheykh Ṣāliḥ’s] works,” he declares, “without changing his relation to *taqlīd*.”⁷⁵ Claiming Sheykh Ṣāliḥ as the major inspiration for his understanding of *ijtihād* as a practice that “emphasizes the necessity of demanding evidence from the mufti,” al-Shawkānī instructs believers to critically scrutinize transmissions (*riwāyā*) provided by *mujtahids* from authoritative Islamic texts.⁷⁶

As al-Shawkānī noted, Sheykh Ṣāliḥ also acquired deep knowledge of Arabic grammar, poetics (*maʿānā*), exposition (*bayān*), and exegesis (*tafsīr*), and in *ḥadīth*, all of which were relevant to the robust debates concerning the sources of authority that were beginning to change the intellectual

⁷² Lutz Wiederhold, “Legal Doctrines in Conflict: The Relevance of *Madhhab* Boundaries to Legal Reasoning in the Light of an Unpublished Treatise on *Taqlīd* and *Ijtihād*,” *Islamic Law and Society* 3, 2 (1996): 234–304, 268. Wiederhold offers the best account I know of the complex maneuverings within European Orientalism concerning the closing of the gate of *ijtihād*. He significantly complicates Hallaq’s attribution of this view to Schacht, and identifies precedents in the work of Snouck Hurgronje (see also 235, n. 2).

⁷³ The consciousness of temporal rupture is amply on display in al-Aḥqādārī’s account of al-Quduqī’s introduction of *ijtihād* to Daghestan (see especially *Āthār-i Dāghistān*, 233). For a fuller discussion of relevant passages, see Rebecca Gould, “Why Daghestan Is Good to Think,” in Moshe Gammer, ed., *Written Culture in Daghestan* (Helsinki: Academia Scientiarum Fennica, 2014).

⁷⁴ “Was the Gate of *Ijtihād* Closed?” 32.

⁷⁵ Muḥammad ibn ʿAlī al-Shawkānī, *al-Badr al-tālīʿ bi-maḥāsini man baʿda al-qarn al-sābiʿ*, Khalf al-Manṣūr, ed. (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1998), 200.

⁷⁶ Al-Shawkānī, *Irshād al-fuḥūl ilā taḥqīq al-ḥaqq min ʿilm al-uṣūl* (Cairo: Maṭbaʿat Muṣṭafā al-Bābī al-Ḥalabī wa-Awlādih, 1356/1937), 245–70. The quoted text is Ahmed Fekry Ibrahim’s paraphrase in “Al-Shaʿrānī’s Response to Legal Purism: A Theory of Legal Pluralism,” *Islamic Law and Society* 20 (2013): 110–40, 130, n. 68.

landscape of early modern Yemen during the time of Sheykh Ṣāliḥ's activities.⁷⁷ In short, Sheykh Ṣāliḥ was a superbly skilled *mujtahid*.⁷⁸ (Al-Alqadārī would later denominate him a “*mujtahid-i muṭlaq* [total *mujtahid*].”) ⁷⁹ His intellectual gifts inspired al-Shawkānī to compose a poem that cleverly summarizes his predecessor's erudition by punning on the titles of five of his seven books in three distiches:

How excellent is al-Maqbalī, for he
is a vast sea of knowledge, who has judged justly!
His *Studies* [*abḥāth*] have launched [*saddadat*] an arrow
at the breast of bigotry, one with sharp edges.
His lighthouse [*manār*] is the banner [*‘ālam*] of student's success [*najāḥ al-tālib*]
Ever since he refreshed our spirits [*arwāḥ*] through his presentation.⁸⁰

Each of these terms—“studies” (*abḥāth*), “lighthouse” (*manār*), “banner” (*‘ālam*), “student's success” (*najāḥ al-tālib*), and “spirits” (*arwāḥ*)—refers to a title of a book by Sheykh Ṣāliḥ.

Through his ambitious books that nourish the spiritual desire for knowledge, al-Shawkānī says, Sheykh Ṣāliḥ overcame the fanaticism (*al-ta‘aṣṣub*) of his milieu. Although he does not state this specifically, al-Shawkānī's own writings suggest that this “fanaticism” pertained to the concept and practice of *taqlīd* (especially prominent in Zaydī jurisprudence) and the doctrine of the *mujtahid*'s infallibility. The latter was challenged by Yemeni scholars, including both those who accepted and those who rejected the Zaydī *madhhab*, during the decades between Sheykh Ṣāliḥ's life and al-Shawkānī's. Echoing the lexicon of al-Shawkānī's praise, his Yemeni contemporary Iṣḥāq b. Yūsuf (d. 1750) specifically described as *ta‘aṣṣub* the impulse that caused Zaydī scholars to privilege the teachings of one *mujtahid* over all others.⁸¹

Al-Shawkānī further details how Sheykh Ṣāliḥ's exegetical method, particularly his programmatic rejection of *taqlīd* and embrace of *ijtihād*, broke with past precedent and set an example for the future: “When he encountered

⁷⁷ For an excellent recent account of these debates, see Bernard Haykel and Aron Zysow, “What Makes a Madhab a Madhab: Zaydī Debates on the Structure of Legal Authority,” *Arabica* 59, 3–4 (2012) 332–71.

⁷⁸ *Al-Badr*, 200.

⁷⁹ *Āthār-i Dāghistān*, 233.

⁸⁰ *Al-Badr*, 201. The translation used for this poem is mostly that of Ḥusayn ‘Abdallāh al-‘Amrī, “The Text of an Unpublished *Fatwā* of the Scholar al-Maqbalī (d. 1108/1728 [sic]),” *New Arabian Studies* 2 (1994): 165–74. here 166.

⁸¹ Iṣḥāq b. Yūsuf, *Al-taḥkīk li-‘uqūd al-taḥkīk*, 267 (full Arabic text, based on three collated manuscripts, in Haykel and Zysow, “What Makes a Madhab,” 360–71). For a judgment along similar lines by the African reformist Ṣāliḥ al-Fullānī (1753–1800), *Īqāz al-himam* (India: 1298/1880), 76, line 55; cited in Knut Vikør, “The *shaykh* as *mujtahid*: A Sufi conception of *ijtihād*?” *El sufismo y las normas del Islam: trabajos del IV Congreso Internacional de Estudios Jurídicos Islámicos, Derecho y Sufismo, Murcia, 7–10 mayo 2003*, A. Carmona, ed. (Murcia: Editora Regional de Murcia, 2006), 360.

an *ḥadīth* that had been transmitted through other paths [*kharaja min ṭuruq*], even if was attended by a weakness that [would prevent it from] ... increasing his merit in the eyes of others [*yablugh bih ilā rutbat*],”⁸² Sheykh Ṣāliḥ would nonetheless incorporate this *ḥadīth* into his exegesis. Far from claiming authority or prestige for himself, he refused to rely on external authority in engaging with his scholarly predecessors. By disregarding the authority of the *mujtahid*, disdaining the “fanaticism” that animated the polemics of his Zaydī contemporaries, and abiding by his own independent judgment, Sheykh Ṣāliḥ inspired his Daghestani student al-Quduqī, and subsequent generations of Daghestani scholars who encountered his writings in their local mosques and madrasas, to follow in his footsteps.

After detailing Sheykh Ṣāliḥ’s achievements, al-Shawkānī moves quickly to his own nineteenth century. Shifting to the present tense, he recalls an encounter with a Daghestani scholar in the Imām Sharaf al-Dīn madrasa in Thula, an ancient town dating to the Himyarite (110 BCE–525 CE) period, “built of stone of a glowing amber ... [with] mosques ... dating to the sixth/eleventh century.”⁸³ Meeting the stranger in the madrasa, al-Shawkānī asked what had brought him from Daghestan—located “beyond the lands of the Greeks”—to faraway Yemen. The visitor explained that he had come in search of *al-Baḥr al-zakḥkhār* (“The Turbulent Sea”), a founding work of Zaydī jurisprudence by the Zaydī imam Aḥmad ibn Yaḥyā ibn al-Murtaḍā (d. 1437), to which Sheykh Ṣāliḥ’s “Lighthouse” was the commentary.⁸⁴

The visitor told al-Shawkānī that Daghestan’s most eminent scholars and jurists studied Sheykh Ṣāliḥ’s commentary intensively, even though not all agreed with his teachings concerning *ijtihād* or his rejection of the *madhāhib*.⁸⁵ The Daghestani scholars who scrutinized Sheykh Ṣāliḥ’s commentary had come to suspect that the copy of Ibn al-Murtaḍā’s text at their disposal was faulty, and so he had traveled to Mecca seeking a better one. In Mecca he was advised to journey to Yemen, where, he was told, copies of *The Turbulent Sea* could be found in abundance.

⁸² *Al-Badr*, 202.

⁸³ Clive Smith, notes to Muḥammad ibn Aḥmad al-Nahrawālī al-Makki, *Al-barq al-yamānī fī faṭḥ al-‘uthmānī*, trans. from Arabic by Clive Smith under title *Lightning over Yemen* (London: I. B. Tauris, 2002), 205, n. 4.

⁸⁴ The reference is to Sheykh Ṣāliḥ’s *al-Manār fī al-mukhtār min jawāhir al-Baḥr al-zakḥkhār* (Sana’a: Maktabat al-Jīl al-Jadīd, 1988). Al-Murtaḍā’s work has been edited by ‘Abd Allāh ibn ‘Abd al-Karīm Jarāfī (Beirut: Mu’asassat al-Risālah, 1975). Al-Murtaḍā was also the author of a highly influential overview of Zaydī *fiqh*, *Kitāb al-Azhar*, which has been called “the official textbook of the present day Zaidī state” (R. Strothmann, “Al-Zaidiyya,” *Encyclopedia of Islam*, 1st ed. (Leiden: Brill: 1913–1936).

⁸⁵ See Kemper, *Herrschaft*, for the *istiftā’* (request for a *fatwā*) of a Daghestani scholar who pejoratively refers to Sheykh Ṣāliḥ as an “innovator [*al-mubtadi’*]” and condemns al-Quduqī by association (358, citing material held in Daghestan Institute for History, Archeology, and Ethnography).

Among many striking details of this narrative is the suggestion that Sheykh Ṣāliḥ's popularity in Daghestan was attended by critical reserve, with some scholars preferring the Zaydī traditionist Ibn al-Murtaḍā to his anti-authoritarian critic. Surely, the iconoclastic sheykh would not have wanted unquestioning followers any more than his student al-Quduqī would have wished to elicit *taqlīd*. Both consistently downplayed the authority of the *mujtahid* while emphasizing the need for authoritative textual transmission. What they taught was less the rejection of a teaching than the cultivation of a specific intellectual consciousness: a form of critical reasoning that refused to follow authority blindly, insisted on critically interrogating its sources, and made the hermeneutical tools deployed by the most exalted *mujtahids* accessible to all believers regardless of their lineage (in relation to *ahl al-bayt*, the family of the Prophet), their ethnic pedigree (in relation to the Zaydī imams), or even their scholarly credentials (as determined by their teachers' identities).

Al-Shawkānī goes on to recount how, the next day, he discovered this same Daghestani scholar near the madrasa complex examining a manuscript of "The Turbulent Sea" and reading it aloud. Al-Shawkānī marveled at both his absorption in his work and his fluent Arabic: "He read the text as though satisfying his most intense desire, and seemed to rejoice in this activity to the greatest degree. I had never before encountered anyone with his intelligence and eloquence or purity of speech."⁸⁶ Listening to the visitor's lucid Arabic filled al-Shawkānī with ecstasy and pleasure (*al-ṭarab wa-l-nishāṭ*).⁸⁷ Al-Shawkānī's commemoration of the ties among Sheykh Ṣāliḥ, his Zaydī predecessors, and the scholars of Daghestan has served as a *locus classicus* for modern scholarship on Daghestan's contact with the Arab world. This line of research was inaugurated by the Orientalist Ignatii Krachkovskii in the first half of the twentieth century.⁸⁸ If more fully pursued, this Yemeni-Daghestani genealogy is well-poised to transform our understanding of the global circulation of Arabic-Islamic culture during the early modern period.

Writing almost exactly a century after al-Shawkānī, in his Arabic biographical dictionary of the Islamic scholars of Daghestan, the Soviet-era Daghestani scholar al-Durgilī (1891–1935) echoed the report given by al-Shawkānī. Al-Durgilī records, "Sheykh Ṣāliḥ al-Yamānī said of himself that he had the capacity for *ijtihād*, and that some of his interpretations contradicted the schools [*madhāhib*] of the four imams."⁸⁹ On al-Durgilī's account,

⁸⁶ *Al-Badr*, 201–2.

⁸⁷ *Ibid.*, 202.

⁸⁸ See Krachkovskii, "Dagestan i Yemen," *Izbrannye sochineniia* (Moscow-Leningrad: Akademii nauk SSSR, 1960) 6: 574–84; and in French as "Daghestan et Yemen," *Mélanges E. F. Gautier* (Tours: Arrault et cie, maîtres imprimeurs, 1937), 288–96. More recent commentaries include Kemper, *Herrschaft*, 356; and Alikberov, *Epokha klassicheskogo islama na Kavkaze* (Moscow: Vostochnaia literatura, 2003), 314.

⁸⁹ Al-Durgilī, *Nuzhat*, 17, 26, 51.

Sheykh Ṣāliḥ bequeathed this polemical orientation toward the *madhāhib* (the four Sunni schools and the Zaydī branch of Shīʿa jurisprudence), and his resistance to *taqlīd*, to his Daghestani student, as well as to al-Shawkānī.

Like Sheykh Ṣāliḥ, al-Quduqī followed specific schools, which in his case (not his teacher's) were Ashʿarī theology (*kalām*) and Shāfiʿī jurisprudence, but he considered himself independent of both.⁹⁰ For Sheykh Ṣāliḥ, the relevant schools were Muʿtazilī *kalām* and Zaydī jurisprudence, which he rejected but which profoundly shaped his worldview.⁹¹ It is instructive to consider that the traditional opposition between Ashʿarī and Muʿtazilī thought—which might roughly be glossed as a tension between non-rational and rationalist hermeneutics—did nothing to inhibit intellectual exchange between a Yemeni sheykh and his Daghestani disciple. As al-Durgilī notes in concluding his dictionary, Sheykh Ṣāliḥ's works enjoyed widespread popularity in Daghestan and were celebrated by arguably the most significant figure in Daghestani literary modernity, Ḥasan al-Alqadārī (1834–1910).⁹²

The genealogy drawn by al-Shawkānī, al-Durgilī, and Ḥasan al-Alqadārī suggests that, for Daghestan, the gate to *ijtihād* lay through Yemen. Paradoxically, given the traditional grounding of Daghestani *fiqh* (jurisprudence) in the Shāfiʿī *madhhab*, this gate was opened by the Yemeni early modern critique of the (Zaydī) Shīʿa teaching concerning the infallibility of the *mujtahid*. At the same time, the powerful attraction exerted by the *sharīʿa* movement, including its innovative if controversial rejection of *ʿādāt/urf*, required the translation of Yemeni critical hermeneutics to early modern Daghestan. Ghāzī Muḥammad cites al-Quduqī as an authority, notwithstanding their divergent approaches to *uṣūl al-fiqh* (the principles of jurisprudence).

It is therefore plausible that Ghāzī Muḥammad's call for the “full implementation of *sharīʿa*, not only in the strict sense of law as a legally compulsory norm, but also as an ethical standard,” was partly inspired by the newly invigorated relationship to Islamic law that had been ushered in by the Daghestani turn to *ijtihād* just over a century before.⁹³ While *ijtihād* is hardly unique to modernity in Daghestan, or anywhere in the Islamic world, that al-Quduqī's

⁹⁰ Al-Alqadārī, *Āthār al-Yarāghī*, 232.

⁹¹ For Zaydism as “the only current within Islam that fostered the continuous transmission and study of Muʿtazilī *kalām* up to the present,” see Gregor Schwarb, “Muʿtazilism in a 20th Century Zaydī Qurʾān Commentary,” *Arabica* 59 (2012): 372–403, 373. Ibn al-Murtadā, whose *Al-Baḥr al-zakḥkhār* widely circulated in Daghestan, was also the author of *Ṭabaqāt al-Muʿtazila* (Classes of the Muʿtazilīs), which has been published in a critical edition by Susanna Diwald-Wilzer as *Die Klassen der Muʿtaziliten* (Wiesbaden: Steiner, 1961).

⁹² Al-Durgilī, *Nuzhat*, 17 (Arabic). For a full discussion of al-Alqadārī's oeuvre, see Rebecca Gould, “The Literatures of Anticolonial Insurgency: Aesthetics and Violence in the Caucasus” (New Haven: Yale University Press, forthcoming), ch. 2.

⁹³ Kemper, *Herrschaft*, 218. Kemper's argument that *ijtihād* was less intensively debated in Daghestan than in nineteenth-century Tatarstan (*Herrschaft*, 360) might be taken as an assertion that it was less widespread in Daghestan than elsewhere in the Islamic regions of the Russian Empire. Further research should deepen the textual basis for the connection between al-Quduqī's

introduction of this particular form of *ijtihād* coincided with broader changes in Daghestan's geographic horizons is historically significant. However these influences are tabulated, and however we relate *ijtihād*, indigenous law, and modernity, it is beyond dispute that Ghāzī Muḥammad's implementation of *sharī'a* and rejection of *ādāt* were to have drastic consequences for the subsequent history of colonialism in the Caucasus, just as the global turn to *ijtihād* and against *taqlīd* fundamentally revised the script of Islamic modernity.

The tension between *sharī'a* and *ādāt*, which had long been internal to Islamic legal theory, received greater emphasis in Daghestan from the seventeenth century onward, and came to constitute one distinguishing marker of Daghestan's Islamic modernity, at least as articulated by the *ulamā'*. These tensions obviously had much to do with the need to present a unified front against colonial rule and to counter the colonial tendency to privilege *ādāt* at the expense of *sharī'a*. But these shifts in Daghestani legal theory also appear to have been influenced by more local histories. Like many Islamic reform movements in modernity, the anticolonial jihad, for which Ghāzī Muḥammad laid the initial framework in his treatise against indigenous law, was traditionist and future-oriented in equal measures.⁹⁴ It was traditionist in that it sought to return to the roots (*uṣūl*) of the Islamic tradition and clear away all subsequent accretions. It was future-oriented in its break with past precedents and in particular with the custom of interpreting Islamic traditions with reference to ancestral norms and by relying on the authority of past precedent and the reputation of the *mujtahids*.

Examples of such cognitive refashioning can be discerned long before Sheykh Ṣālīḥ and al-Quduqī, not to mention Ghāzī Muḥammad. A case in point is the Egyptian mystic ʿAbd al-Wahhāb al-Shaʿrānī (d. 1595), who developed Ibn ʿArabī's teaching concerning *madhāhib* boundary crossing into a robust theory of Islamic legal pluralism. Like later practitioners and propagators of *ijtihād*, al-Shaʿrānī sought "to purge jurisprudence of juristic accretions that are not based on textual sources."⁹⁵ His advocacy for *madhāhib* boundary crossing before modernity can be multiplied by still earlier examples, from thirteenth-century Damascus to the earliest formulations of the Mālikī and Shāfiʿī schools.⁹⁶ But, as Islamic reformers from Rashīd Riḍā in Egypt to

turn to *ijtihād* and Ghāzī Muḥammad's imposition of *sharī'a*, and compare these shifts to developments in neighboring parts of the Islamic world.

⁹⁴ For Islamic reformism as both traditionist and future-oriented, see Malcolm Kerr, *Islamic Reform: The Political and Legal Theories of Muḥammad ʿAbduh and Rashīd Riḍā* (Berkeley: University of California Press, 1966). Like Ghāzī Muḥammad, ʿAbduh was, in Kerr's word, a "conservative by language and manner and a radical by the implication of many of his teachings" (105).

⁹⁵ Ibrahim, "Al-Shaʿrānī's Response," 130, 132.

⁹⁶ See, respectively, Konrad Hirschler, "Pre-Eighteenth-Century Traditions of Revivalism: Damascus in the Thirteenth Century," *Bulletin of the School of Oriental and African Studies* 68, 2

Syed Aḥmad Khan in India, and ʿAlī al-Ghumūqī in Daghestan came to recognize, while *madhāhib* boundary crossing was not a sufficient condition for their project to modernize Islam, it was an essential component of it.⁹⁷

Al-Quduqī's early modern turn to *ijtihād* under Sheykh Ṣāliḥ's tutelage was by no means unique to Daghestan. Scholars such as Stefan Reichmuth have traced the circulation of these ideas throughout the Islamic heartland, including Mecca, Medina, and the African littoral, in part by tracking the networks cultivated by the peripatetic Yemeni scholar al-Murtaḍā al-Zabīdī (1732–1791), whose legacy and oeuvre in many respects parallels that of al-Quduqī.⁹⁸ A century after the questioning of tradition and authority and the rejection of *taqlīd* spread throughout Daghestan, similar intellectual movements were well underway in the geographically proximate—and, by virtue of colonial rule, politically cognate—world of Tatarstan, possibly under the influence of al-Quduqī's teachings.⁹⁹

As if underscoring these circuits of intellectual exchange from Daghestan to Yemen and Daghestan to Tatarstan, one of the most exciting developments in Islamic studies in recent years has been the growing body of work that demonstrates that early modernity across the Islamic world was broadly marked by a renewed interest in multiple forms of independent inquiry, among which *ijtihād* figures prominently.¹⁰⁰ This new wave of scholarship on Islamic modernity before and outside colonial frames of reference profits particularly from the work of Muzaffar Alam, Sanjay Subrahmanyam, Marshall Hodgson, Victor Lieberman, André Wink, and other historians who have enabled us to see Asian early modernity as a period of discovery, renewal, and cross-cultural alliances rather than as a mere prelude to subsequent dramas of colonial and

(2005): 195–214; and Ahmed Ḥasan, “Early Modes of Ijtihād: Ray, Qiyās and Istiḥsān,” *Islamic Studies* 6, 1 (1967): 47–79.

⁹⁷ The exchanges between Rashīd Riḍā and Ali Kaiaev are the subject of ongoing research by Shamil Shikhaliev (Institute for History, Archeology, and Ethnography); also see notes 126–27 below.

⁹⁸ Stefan Reichmuth, *The World of Murtaḍā Al-Zabīdī (1732–91)* (London: Gibb Memorial Trust, 2009). For related seventeenth-century turns to *ijtihād*, see Stefan Reichmuth, “The Interplay of Local Developments and Transnational Relations in the Islamic World: Perceptions and Perspectives,” in Anke von Kügelgen, Michael Kemper, and Allen Frank, eds., *Muslim Culture in Russia and Central Asia from the 18th to the Early 20th Centuries*, vol. 2 (Berlin: Klaus Schwartz Verlag, 1998), 11.

⁹⁹ Michael Kemper, *Sufis und Gelehrte in Tatarien und Baskirien, 1789–1889* (Berlin: Schwarz Verlag, 1998), 272–307. Kemper suggests that al-Quduqī may have indirectly influenced Tatar scholar ʿAbd al-Nāṣir al-Qūṣāwī (d. 1812) (in *Herrschaft*, 358, and *Sufis und Gelehrte*, 303–4).

¹⁰⁰ For South Asian parallels with the turn to *ijtihād* in Daghestan and Yemen, see J. N. Jalbani, *Teachings of Shāh Walīyullāh of Delhi* (Lahore: Muhammad Ashraf, 1967).

ethnic violence.¹⁰¹ That the Caucasus has yet to figure substantively into this emergent sub-field attests to the work remaining to scholars of Daghestan and elsewhere in the north Caucasus, as well as Azerbaijan and Georgia, in terms of rethinking still-regnant periodizations in a postcolonial age.¹⁰²

Increasingly, the Islamic early modern is understood to have entailed new networks of global exchange. Through his travels from Egypt, the Hijaz, and Yemen, and his studies with Sheykh Ṣāliḥ, al-Quduqī participated in this nascent Islamic early modernity, in particular its changed relationship to the traditional sources of Islamic authority. This reconceptualization of the sources of Islamic authority introduced new understandings of community into Daghestani intellectual culture. We should not assume that these changes in al-Quduqī's approach to Islamic learning were entirely the work of Sheykh Ṣāliḥ. Many figures in early modern Yemen were rethinking the sources of Islamic authority and al-Quduqī could have easily encountered them during his peregrinations across the Islamic ecumene.¹⁰³ Furthermore, outside Yemen, al-Quduqī could have been indirectly influenced by figures such as ʿAbd al-Ghanī al-Nābulī (1641–1731), who passed his life as a teacher at the Umayyad Mosque in Damascus while al-Quduqī spent his final years in Aleppo.¹⁰⁴

Khaled el-Rouayheb has recently detailed the many ways in which the seventeenth-century Maghreb, along with Ottoman lands more generally, was a fertile site for “opening up the gates of verification,” particularly in the field of logic (*ʿilm al-mantiq*). His work thereby challenges long-held assumptions concerning the decline of Arabic learning during the Ottoman period.¹⁰⁵ He delineates how “the introduction of a range of new handbooks in the fields

¹⁰¹ See for example Muzaffar Alam, *The Languages of Political Islam: India 1200–1800* (London: Hurst, 2004); Sanjay Subrahmanyam, “Connected Histories: Notes towards a Reconfiguration of Early Modern Eurasia,” *Modern Asian Studies* 31, 3 (1997): 735–62; Marshall Hodgson, *The Venture of Islam: Volume 3: The Gunpowder Empires and Modern Times* (Chicago: University of Chicago Press, 1974); Victor Lieberman, *Strange Parallels: Southeast Asia in Global Context, c. 800–1830: Volume 2: Mainland Mirrors: Europe, Japan, China, South Asia, and the Islands* (Cambridge: Cambridge University Press, 2009); André Wink, *Al-Hind: Volume 3: Indo-Islamic Society, 14th–15th Centuries* (Leiden: Brill, 2003).

¹⁰² For early modernity from the perspective of seventeenth-century Georgian-Safavid culture, see Rebecca Gould, “Sweetening the Heavy Georgian Tongue: Jāmī in the Georgian-Persianate Ecumene,” in Thibaut d’Hubert and Alexandre Papas, eds., “A Worldwide Literature: Jāmī (1414–1492) in the Dār al-Islām and Beyond” (Leiden: Brill, forthcoming).

¹⁰³ Some of these figures are enumerated in Haykel and Zysow, “What Makes a Madhab,” 350–54.

¹⁰⁴ For a preliminary study of this figure from the perspective of Islamic modernity, see Samer Akkash, *ʿAbd al-Ghani al-Nabulsi: Islam and the Enlightenment* (Oxford: One World Publications, 2007).

¹⁰⁵ “Opening the Gate of Verification: The Forgotten Arab-Islamic Florescence of the 17th Century,” *International Journal of Middle East Studies* 38, 2 (2006): 263–81; “Was There a Revival of Logical Studies in Eighteenth-Century Egypt?” *Die Welt des Islams* 45, 1 (2005): 1–19; “The Myth of ‘The Triumph of Fanaticism’ in the Seventeenth-Century Ottoman Empire,” *Die Welt des Islams* 48, 2 (2008): 196–221.

of grammar, semantics—rhetoric, logic, and theology, mostly of either Persian or Maghribi origin,” worked together with the spread of Sufi orders to stimulate an embrace of *taḥqīq* (verification) among Islamic scholars.¹⁰⁶ Like *ijtihād*, *taḥqīq* entailed forms of reasoning and analysis that displaced the legitimacy of *taqlīd*.

Moving further ahead in time, Rudolph Peters has shed light on the vibrancy of *ijtihād* across the eighteenth- and nineteenth-century Islamic world.¹⁰⁷ In broader and more contentious terms, Reinhard Schulze has described the eighteenth-century Islamic world as an age of enlightenment that paralleled, without fully intersecting with, the European example. “By embedding the history of Islam in the universal history of the eighteenth century,” he controversially argued, “We can design a new way of understanding the Islamic world.”¹⁰⁸ While such declarations court the danger of reaffirming a Eurocentric paradigm, the global framework within which they call on us to situate Islamic history offers a paradigm for understanding cultural exchange that is more promising than isolationist approaches that treat the early modern period as an era of decline for the Islamic world.

Daghestanis’ turn to *ijtihād* and their rejection of *‘ādāt/‘urf* entailed a turn away from past practices, and toward new ways of dealing with social norms. Both moves privileged the critical exercise of reason above the uncritical implementation of general opinion. The shift in balance between the individual scholar and the authority of the collective, whether broadly in the context of the Islamic umma, or among Daghestani mountaineers, is, along with a changed relationship to the authority of legal precedent, another constitutive aspect of modernity within and beyond the Islamic ecumene. While the empirical links among *ijtihād*, *madhāhib* boundary crossing, the rejection of *‘ādāt*, and the genealogy of Islamic modernity in early modern Daghestan require further exploration, the convergence of these currents in al-Quduqī’s scholarship suggest that, already in the seventeenth century, and on the Islamic world’s northernmost periphery, this peripatetic Daghestani laid the groundwork for a new, critical grammar of Islamic reasoning.

As yet unexplored within the flourishing body of research on early modern *ijtihād* is the question of whether, beyond the conceptual linkages adduced above, the global turn to *ijtihād* and the troubling of *madhāhib* boundaries helped underwrite the rejection of *‘ādāt* in subsequent anticolonial movements

¹⁰⁶ “Opening the Gate,” 264.

¹⁰⁷ “Ijtihad and Taqlid in Eighteenth and Nineteenth Century Islam,” *Die Welt des Islams* 20, 3/4 (1981): 131–45.

¹⁰⁸ “Das islamische achtzehnte Jahrhundert: Versuch einer historiographischen Kritik,” *Die Welt des Islams* 30, 1 (1990): 140–59, 149. Also see his, “Was ist die islamische Aufklärung?” *Die Welt des Islams* 36, 3 (1996): 276–325; and also the other contributions to this special issue of *Die Welt des Islams*, entitled “Islamic Enlightenment in the 18th Century?” Schulze’s thesis has been subjected to numerous critiques, *inter alia*, B. Radtke, “Erleuchtung und Aufklärung: Islamische Mystik und europäische Rationalismus,” *Die Welt des Islams* 34, 1 (1994): 48–66.

that stimulated revisionary approaches to the Sunni schools of law. If parallels beyond Daghestan can be established for this combined turn to independent legal reasoning and the rejection of indigenous law, this would offer a new perspective on the relationship between *sharīʿa* and *ʿādāt* in modern Islamic thought, and within the anticolonial Islamic movements that have framed political modernity globally. Could the reconceptualization of *fiqh* that this article has portrayed as a signature feature of Daghestani early modernity have contributed to the subsequent rejection of *ʿādāt* during the colonial period, and especially by militant anticolonial movements? Is there a relation between *ijtihād* and anticolonial jihad?

The historical congruence between early modern *ijtihād* and anticolonial jihad suggests that the precolonial Islamic encounter with critical legal reasoning profoundly affected the subsequent encounter with colonial modernity. In equally forceful and controversial although divergent ways, contemporary scholars Abdullahi Ahmed An-Naʿim and Wael Hallaq have argued, “The ‘Islamic state’ ... is both an impossibility and a contradiction in terms.”¹⁰⁹ An-Naʿim’s and Hallaq’s dual refutation of attempts to theorize Islamic law in relation to the infrastructures of modern governmentality have rich implications for our understanding of Islamic modernity, and particularly for the role of law within this modern economy. Cumulatively, such work suggests that both the construction and rejection of indigenous law, by both colonial and Islamic sources, is an effect of modern transformations in the authority of the individual, versus the authority of the community, and hence in the space for and scope of political critique.

AGAINST TAMADHHUB

From Sheykh Ṣāliḥ to al-Quduqī, to later figures such as al-Alqadārī and al-Durgilī, a progressive embrace of *ijtihād* combined with an increased interest in, and commitment to *madhāhib* boundary crossing. *Tamadhhub* (roughly: sectarianism), the view that one school alone should have authority for a given Muslim and that *madhāhib* boundary crossing contravenes Islamic law, is criticized by Sheykh Ṣāliḥ in poetry (quoted below from “The high banner,” the text al-Quduqī copied most) that circulated across Yemen and Daghestan as widely as did the *fiqh* works in analytical prose that more conventionally inform modern scholarly engagements with Islamic law.¹¹⁰

¹⁰⁹ Wael Hallaq, *The Impossible State: Islam, Politics, and Modernity’s Moral Predicament* (New York: Columbia University Press, 2013), ix. Also see Abdullahi Ahmed An-Naʿim, *Islam and the Secular State: Negotiating the Future of Shariʿa* (Cambridge: Harvard University Press, 2008).

¹¹⁰ For discussion of early modern *fuqahāʾ* who advocated for *tamadhhub*, see Ibrahim, “Al-Shaʿrānī’s Response,” 113. For a contemporary Yemeni critique of *tamadhhub*, see Zayd ibn ʿAlī Wazīr, *ʿIndamā yasūdu al-jafāf: mā sāt al-tamadhhub* (Richmond, Surrey: Markaz al-Turāth wa-al-Buḥūth al-Yamanī, 1993). It also indicates the lingering impact of the Yemeni critique of

Sheykh Ṣāliḥ's opposition to *tamadhhub* reverberates in three separate *qaṣīdas* in his magnum opus, "The high banner," each of which uses the same refrain (*maṭlaʿ*):¹¹¹

I have avoided the legal schools all my life.
 I prefer the sacred book to the companions.
 In the Prophet's path—may God praise him—
 I will find the quencher for my thirst.
 Belonging to legal schools [*al-tamadhhub*] means nothing to me.
 Legal schools matter only to sycophants and troublemakers.

Sheykh Ṣāliḥ's verse polemics belong to a broader Yemeni discourse, conducted most compellingly in poetry and in prose commentaries on these poems. This discourse challenged the legitimacy of the Zaydī *madhhab*, including the legal authority of the *mujtahids* working within this tradition. A major later contribution to this debate is Iṣḥāq b. Yūsuf's *ʿUqūd al-tashkīk* (The questioned contract), whose discussion of *taʿaṣṣub* I referenced above. As a grandson of a Zaydī imam, he may have been constrained from criticizing the Zaydī derivation of legal authority, but he nonetheless confronted directly the contradictions in the Zaydī position.¹¹² By citing from Sheykh Ṣāliḥ's *qaṣīdas* profusely in their various contributions to *fiqh*, Daghestani scholars localized a Yemeni discourse on the nature of Islamic authority. In many respects, this transregional discourse initiated the gradual displacement of the traditional *madhāhib* divisions that continues to characterize modern Islam.

Al-Durgilī may be the last Daghestani scholar to cite Sheykh Ṣāliḥ's poem against *tamadhhub*,¹¹³ but he was not the first. His predecessor Ḥasan al-Alqadārī incorporated these verses into two of his most important works: his collection of *fatāwā* (legal opinions) and the concluding section of his history of Daghestan, which consists primarily of a compendium of Daghestani scholars and poets.¹¹⁴ It is reasonable to suppose that these verses, and perhaps the idea of citing them, reached al-Alqadārī through al-Quduqī's writings.

Islamic authority that a Muslim reformist such as Yūsuf Qaraḍāwī should also make *tamadhhub* an object of critique in his *Kayfa nataʿāmulu maʿa al-turāth wa-al-tamadhhub wa-al-ikhtilāf?* (Cairo: Wahbah, 2001).

¹¹¹ Ṣāliḥ ibn Maḥdī al-Maqbalī, *Al-ʿālam al-shāmikh* (manuscript copied in the Great Mosque of Ṣanaʿa in 1324 A.H.), at: http://makhtota.ksu.edu.sa/makhtota/2367/1#UpsylmR_XKs, 125, 130, 136 (accessed 12 Oct. 2014).

¹¹² Iṣḥāq b. Yūsuf's *ʿUqūd al-tashkīk* is given in full with responses by his contemporaries, in Ismāʿīl ibn ʿAlī al-Akwaʿ, *al-Zaydiyyah: nashʿatuhā wa-muʿtaqadātuhā* (Beirut: n.p., 2000). Iṣḥāq b. Yūsuf's poem and biography are discussed in Haykel and Zysow, "What Makes a Madhab," 350–52.

¹¹³ Al-Durgilī, *Nuzhat*, 17 (Arabic text).

¹¹⁴ See Al-Alqadārī's, *Āthār-i Dāghistān*, 233; and his *Jirāb al-Mamnūn* (Temir Khan Shura: Mavraev, 1912), 279. I anticipate that further review of unpublished Daghestani manuscripts will reveal still more engagements with Sheykh Ṣāliḥ's poem.

Sheykh Ṣāliḥ's poetic condemnation—referred to by al-Durgilī as *dhamma*, a curse—of *tamadhub* is rich in untranslatable puns, including a powerful semantic rhyme between legal schools (*al-madhāhib*) and the companions of the Prophet (*al-ṣaḥāba*), whose moral authority was frequently challenged within Shīʿa thought and especially by its Zaydī variant.¹¹⁵ By describing the division into legal schools as sectarianism (*al-tamadhub*) and associating this practice with the Prophet's companions, Sheykh Ṣāliḥ deploys the Zaydī version of Islamic history to advance his (non-Zaydī) opposition to *taqlīd*.¹¹⁶ By equating the *ṣaḥāba* with the *madhāhib*, and affirming his preference for the Qurʾān and *ḥadīth* over the (derivative) legal schools, he affirms his preference for the Prophet over the Prophet's companions, and, by extension, for the sources of Islamic teachings over more recent accretions (including, again by implication, *ʿādāt*^c *urf*).

Sheykh Ṣāliḥ's *maṭlaʿ*^c is furthermore a critique of the historical conditions that caused Islamic jurisprudence to engage in “such a glorification of the ancestors that they seemed henceforth to be incapable of significant error,” which had the ancillary consequence of institutionalizing *taqlīd*.¹¹⁷ Finally, in implicitly connecting *tamadhub* with *taʿaṣṣub* (fanaticism), he effectively lays the groundwork for the more systematic critiques of Iṣḥāq b. Yūsuf and al-Shawkānī. The infallibility that Zaydī traditionists attributed to their imams and *mujtahids* made *ijtihād* invalid for anyone lacking this elite status, a dilemma Sheykh Ṣāliḥ contested in his poem. Even as he affirms that the prophet's *sunna* (the combined weight of the prophetic tradition, including the *ḥadīth*) is adequate to quench his thirst, he also states that divisions among the schools are meaningless, for *madhāhib* are breeding grounds for sycophants and troublemakers (*al-mamāra wa al-muḥabī*).

To understand the appeal of Sheykh Ṣāliḥ's challenge to the *mujtahid*'s authority in early modern Daghestan, one must remember that this poem is associated with the author's exile to Mecca, where he died. The Daghestani scholar who cited the poem most profusely, Ḥasan al-Alqadārī, was himself exiled from Daghestan following an ill-fated 1877 anticolonial uprising for which he was unjustly blamed. He may well have experienced pangs of anguish when reading Sheykh Ṣāliḥ's poetic reflection on the rift between the jurist and his

¹¹⁵ See Etan Kohlberg, “Some Zaydī Views on the Companions of the Prophet,” *Bulletin of the School of Oriental and African Studies* 39, 1 (1976): 91–98.

¹¹⁶ According to al-Alqadārī, Sheykh Ṣāliḥ belonged to the “people of the *sunna* [*ahl-i sunneh*]” (*Āthār-i Dāghistān*, 233). However his beliefs, as has been demonstrated, were radically heterodox and influenced by Zaydī theology.

¹¹⁷ Josef van Ess, *Les prémices de la théologie musulmane* (Paris: Albin Michel, 2002), 24. On the infallibility of the prophets' companions, also see Mohammad Arkoun, “The Concept of Authority in Islamic Thought: ‘La Hukma illa li-llah,’” in Klaus Ferdinand and Mehdi Mozaffari, eds., *Islam: State And Society*, (London: Routledge, 1988).

community.¹¹⁸ That he remarked on Sheykh Ṣāliḥ's death in Mecca in a *fatwā* dated 1905 suggests that he discerned his own predicament in his verses, and that their shared woes intensified for him both the poem's affective impact and its defense of critical reason.¹¹⁹

We will likely never fully trace the affective dimensions of Sheykh Ṣāliḥ's *maṭlaʿ* for al-Alqadārī. But we do know from al-Alqadārī's collection of *fatawā* issued from his exile in Tatarstan to Muslims across the Russian Empire, including those who did not adhere to the Shāfiʿī school, that the poet-scholar viewed boundary crossing among the *madhāhib* in much the same way as did his Yemeni counterpart. That his legal rulings cited from Ḥanafī as well as Shāfiʿī sources may have been motivated by the greater accessibility of Ḥanafī books in Tatarstan. But it was made possible by his open-minded approach to the problem of *ikhtilaf* (disagreement among the *madhāhib*), which he justified in terms of fellow Shāfiʿī jurists such as al-Suyūṭī (d. 1505).¹²⁰ We also know that, for a Sunni Muslim, al-Alqadārī was unusually sympathetic to the Shīʿa, whom, he argued, "belong to the people of the *qibla* [direction for prayer] and may not be called unbelievers."¹²¹ Finally, we know that he was, like his Yemeni predecessors, opposed to the fanaticism (*taʿaṣṣub*) that refused to make provision for *madhāhib* boundary crossing or to recognize *ikhtilaf* among the *madhāhib* as a permanent condition of Islamic intellectual inquiry, and a blessing from God.¹²²

The rejection of the Islamic schools of law boldly announced by Sheykh Ṣāliḥ, reiterated on multiple occasions by al-Alqadārī, and celebrated by al-Durgilī, reached its culmination in the forms of contemporary Islamic piety that, as Saba Mahmood notes for Egypt, possess a "'post-*madhhab*' character."¹²³ More locally with respect to Daghestan, the Daghestani scholar Amir Navruzov has recently linked the precedents set by Sheykh Ṣāliḥ and al-Quduqī

¹¹⁸ For a contemporary Yemeni attempt to relate Sheykh Ṣāliḥ's poem to his exile, see "Al-zaidiyya fī suṭūr," at: <http://www.ye1.org/vb/showthread.php?t=293100> (accessed 12 Oct. 2014).

¹¹⁹ Krachkovskii, "Dagestan i Yemen," 583.

¹²⁰ See, for example, al-Alqadārī's ruling that a Ḥanafī who marries a Shāfiʿī can regard his marriage as valid even if he switches to the Shāfiʿī school, and, even more controversially, concerning the permissibility to Muslims of marrying Christian and Jewish women (*Jirāb al-Mamnūn*, 158 and 290, respectively).

¹²¹ Kemper, "Daghestani Shaykhs and Scholars in Russian Exile," in Moshe Gammer and David J. Wasserstein, eds., *Daghestan and the World of Islam* (Helsinki: Annales Academiae Scientiarum Fennicae, 2006), 103 (paraphrasing al-Alqadārī). Al-Alqadārī was the author of two unpublished treatises in defense of the Shīʿa. See Amri Shikhsaidov, "Rukopisnoe Nasledie Alkadari," in *Istoriko-literaturnoe nasledie Gasana Alkadari* (Makhachkala: Dagestanskii filial AN SSSR, 1988), 60.

¹²² *Jirāb al-Mamnūn*, 50.

¹²³ *Politics of Piety* (Princeton: Princeton University Press, 2005), 81.

to discussions that circulated around *ijtihād* in twentieth-century Daghestani periodicals such as *Bayān al-Ḥaqā'iq* and *Jarīdat Dāghistān*.¹²⁴

In addition to the direct influence that Sheykh Ṣāliḥ's teaching on *ijtihād* exerted (via al-Quduqī) in early Soviet Daghestan, a more direct route of influence was Rashīd Riḍā's journal *al-Manār* (Lighthouse, 1898–1935), which published a lengthy discussion on the relationship between *ijtihād* and *taqlīd* in one of its first issues.¹²⁵ ʿAlī al-Ghumūqī, who worked as an editor for *Jarīdat* from its founding in 1913 and assumed the role of chief editor in 1918, had studied at the famous Islamic university al-Azhar with Rashīd Riḍā from 1905–1907.¹²⁶ Notably, Riḍā's journal bears the same name as Sheykh Ṣāliḥ's commentary on Ibn al-Murtaḍā's "The Turbulent Sea."

Not all Daghestani scholars fit easily into the pro-*ijtihād* paradigm; we have seen how Ghāzī Muḥammad, for example, combined the rejection of *ʿurf* with the rejection of *ra'y*. Presumably he did not conceive of himself as an advocate for *ijtihād*, although that remains to be ascertained. All of the scholars mentioned here, whether Daghestani or Yemeni, did however cultivate hermeneutical principles that challenged past reading practices that, in their view, relied excessively on uncritical notions of authority. Working as these Daghestani and Yemeni scholars did in remote mountainous villages on the borderlands of the Islamic world, their heterodoxy made geographical sense. The alliances between the rejection of authority in scriptural hermeneutics and the heterodoxy demonstrated in the lives and writings of Sheykh Ṣāliḥ, al-Quduqī, al-Alqadārī, and al-Durgilī suggest that the turn away from custom and the concomitant embrace of critical reasoning in modernity reaches beyond and before the colonial encounter. This recognition additionally lays the groundwork for a concept of modernity that does not presume European experience as the conceptual or empirical norm.

FROM PLURALITY TO HYBRIDITY

In a recent landmark study of how colonial subjects gained political leverage from legal hybridity in colonial era Tashkent, Paolo Sartori makes the case for legal pluralism "not [as] an explanatory theory" but rather as "a sensitising concept." On Sartori's account, legal pluralism provides "a starting point for

¹²⁴ "Idzhtihad ili sledovanie traditsii?" at: <http://gazavat.ru/history3.php?rub=14&art=433> (accessed 12 Oct. 2014). A fuller treatment of debates concerning *ijtihād* in these periodicals can be found in Navruzov's "Dzharidat Dagistan"—*araboiazychnaia gazeta kavkazskikh dzhadidov* (Moscow: Mardzhani, 2007), 174–80. For the impact of *al-Manār* in Tatarstan, see Stéphane A. Dudoignon, "Echoes of *al-Manār* among the Muslims of the Russian Empire," in Stéphane A. Dudoignon, Komatsu Hisao, and Kosogi Yasushi, eds., *Intellectuals in the Modern Islamic World* (London: Routledge, 2006), 85–116.

¹²⁵ "Al-ijtihād wa-al-taqlīd," *Al-Manār* 6 (1315/1903): 236–40.

¹²⁶ I.U.V. Medzhidov and M. A. Abdullaev, *Ali Kaiaev* (Makhachkala: Dagestanskoe kn. izd-vo, 1993), 35–39.

developing analytical criteria for distinguishing variations within the empirical complexities of bodies of law and their interrelationships.”¹²⁷

Sartori points out that “in deciding to hear cases brought by Muslims, Russian bureaucrats employed notions of justice that originated in a legal domain, Islamic law, which was foreign to the colonial authorities.”¹²⁸ Even for Daghestan, which experienced a more violent encounter with colonial rule than did much of Central Asia, it has been claimed that the “administrative process for village and local *‘ādāt* and *sharī‘a* courts that was created by the Russian authorities in pre-Revolutionary and early Soviet Daghestan was significantly influenced by [precolonial] *ittifāq* agreements.”¹²⁹ These examples suggest that no modernity is ever autonomous of its premodern—and precolonial—origins, including the modernity generated by the colonial encounter with which modernity in the Caucasus is largely conflated today.

The plurality that already existed in Islamic societies prior to colonial governmentality compelled the colonial regime to vary its tactics according to time and circumstance. In Daghestan and Chechnya, where it faced the most militant opposition, the administration deliberately suppressed *sharī‘a* while adopting a gradualist approach to the elimination of *‘ādāt*. Contrary to what much scholarship on legal pluralism suggests, these forms of legal hybridity were not simply effects of colonial rule, and they did not necessarily place precolonial legal systems in a subservient position. The dialectic between *sharī‘a* and *‘ādāt* was as complex as the later relation between indigenous norms and colonial governance, and it crucially conditioned the meanings of modernity in the Islamic Caucasus. This relation between *sharī‘a* and *‘ādāt* parallels in the realm of modern governmentality the hermeneutical tensions that were aroused among Sheykh Ṣāliḥ’s opponents by his turn to *ijtihād* and against *taqlīd* in the seventeenth century.

These parallel shifts in legal norms, political forms, and temporal orientations did not coincide to the same extent in all Islamic thinkers. Rather than homogenizing the varied perspectives of Sheykh Ṣāliḥ, al-Quduqī, al-Alqadārī, and al-Durgilī, I have demonstrated that the renewal and reinvention of *fiqh* in the early modern Islamic world constituted a kind of *ijtihād*, even when it was not acknowledged as such. This *ijtihād* exhibited many aspects of the modernity later displayed in colonial sources. As Talal Asad reminds us, “When major social changes occur, people are often unclear about precisely what kind of event it is they are witnessing and uncertain about the practice that would be appropriate or possible in response to it.” Because “would-be reformers, as well as those who oppose them, imagine and inhabit multiple

¹²⁷ “Authorized Lies: Colonial Agency and Legal Hybrids in Tashkent, c. 1881–1893,” *Journal of the Economic and Social History of the Orient* 55 (2012): 688–717, 691, n. 7.

¹²⁸ *Ibid.*, 692.

¹²⁹ Bobrovnikov, “*Ittifāq* Agreements,” 24.

temporalities,”¹³⁰ the innovations of al-Quduqī, or for that matter Ghāzī Muḥammad, cannot be accounted for exclusively in terms of single historical events. Their visions can, however, reasonably be seen to anticipate even more visible transformations in the meanings of the modernity in colonial Daghestan, including the more obviously conflictual relation to the past generated by the encounter with Russian legal norms.

Al-Quduqī did not outline a program for reforming Daghestani society, nor did he announce himself as a reformer. When his teacher Sheykh Ṣāliḥ was called an innovator (*al-mubtadiʿ*), this label was viewed pejoratively by some Daghestani *ʿulamāʾ*.¹³¹ Militant reformist agendas did not cross Daghestan’s horizons until figures such as Ghāzī Muḥammad and Imām Shāmil, who rejected *ʿādāt* even more stridently than did their seventeenth-century predecessors, began agitating for anticolonial jihad.¹³² But in calling for *ijtihād* as his Yemeni teacher had inspired him to do, al-Quduqī introduced temporality into the experience of modernity at least for Daghestan. The genealogy of *ijtihād*—including its function within debates about *madhāhib* boundary crossing and the sources of authority, its transmission from early modern Yemen to Daghestan, and its reemergence as a critique of *ʿādāt* during the colonial period—suggests but one of the many ways in which closer engagements with Daghestani intellectual history by scholars of the Islamic world can revise the master narrative into which our own modernities are inscribed.

Abstract: This article explores the interface of multiple legal systems in early modern Daghestan. By comparing colonial engagements with legal plurality with indigenous genres of Daghestani legal discourse, I aim to shed light on the plurality of legal systems that preceded as well as informed legal discourse under colonialism. The Daghestani turn to *ijtihād* (independent legal reasoning) in the early modern period parallels the turn away from *ʿādāt* (indigenous law) that shaped modern Islamic as well as colonial legal regimes, albeit with radically distinctive genealogies. In tracing these internal debates, I offer a preliminary genealogy of Daghestani *ijtihād* that is grounded in the robust debates concerning the sources of Islamic authority that originated in Yemen and were transmitted to Daghestan by traveling scholars. This essay is a contribution to the study of legal norms on colonial borderlands, as well as to the study of Islamic modernity before colonialism.

¹³⁰ *Formations of the Secular: Christianity, Islam, Modernity* (Stanford: Stanford University Press, 2003), 222.

¹³¹ Kemper, *Herrschaft*, 358; see note 82, above.

¹³² On the rejection of *ʿādāt* in later Daghestani history, see, in addition to Kemper’s *Herrschaft*, 366–400, Moshe Gammer, *Muslim Resistance to the Tsar* (London: Frank Cass, 1994), 43.