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PROPERTY AND POLITICAL NORMS: HANAFI JURISTIC DISCOURSE IN AGRARIAN BENGAL*

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This article explores the reception of discourses about land and property in Islamic jurisprudence in colonial Bengal. I argue that Hanafi fiqh *provided a sophisticated conceptual repertoire for framing claims to property that agrarian political actors in Muslim Bengal drew upon. Yet the dominant framework for understanding property claims in postclassical jurisprudence was ill-fitted to claims of the kind that agrarian movements in colonial Bengal were articulating. As a result, twentieth-century agrarian movements in the region spoke the language of* fiqh*, but nonetheless inhabited the ideological landscape of a much broader twentieth-century world of political aspirations and norms.*

The 1910s and 1920s saw broad-based agrarian mobilizations emerge across the countryside of Bengal in the form of various Islamic and tenants' associations. The watershed moment in the development of this politics into a regional, sustained, and consequential mobilization was the electoral innovations instituted by the Montagu–Chelmsford reforms of 1919, coupled with the energetic activism

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associated with the Khilafat/Non-cooperation Movement of 1919–24. The general set of claims characterizing this broad agrarian movement—the demand for free transferability of tenant holdings without permission from or payment to the landlord, the abolition of landlord rights of preemption in the case of such transfers, the right to cut down trees and dig reservoirs, the general retrenchment or abolition of landlord entitlements, and the establishment of institutions of debt arbitration and forgiveness—were not peculiarly "Muslim" in content. They were all bound to a conception of peasant property that was sharply juxtaposed to the kind of proprietary interest that landlords claimed in their estates. Peasant property, they tended to argue, was a property in the land itself. That proprietary right was grounded in a history of appropriation through labor. Landlord property, in contrast, was a property derived out of the taxation rights of the state to a portion of the product of the soil. Yet it is well known to historians of the region that this strand of agrarian politics was in fact closely associated with Muslim politics in Bengal: (1) its foremost spokesmen in legislative debates were Muslim; (2) Muslims were dominant in the district-based organizations around which the movement cohered; (3) especially in the eastern delta, the rent receiver/rent payer and creditor/debtor relations were frequently conflated with the relationship between Hindus and Muslims; (4) one *differentia specifica* of the *Bengali* Muslims being their connection to agriculture, a Bengali Muslim politics was seen as naturally aligned with the interests of the tenants rather than their landlords; and (5) many among both the tenant activists and their landlord opponents identified the movement as intrinsically "Muslim" in character, either because of its alleged propensity for fanaticism or because of its orientation to abstract questions of justice.

Elsewhere, I have discussed at much greater length the roots of this agrarian politics of *praja svatva* (tenant right, or tenant property) from around the middle of the nineteenth century. Having located this development in changes in colonial policy and law concerning rights to the soil, I motivated the response to these reforms, on the part of peasants, by reference to their embrace of commodity production as the normative foundation for a new vision of peasant freedom. In this vision, rights over land guarantee a juridical status as an independent producer rather than a laborer subordinated to capital. This status turned, however, not primarily on the capacity of peasants to sustain an autarkic existence, but rather on their capacity to engage ever more extensively in commercial exchange. The identification of this politics as "Muslim," I then argued, was grounded in a conception of piety as a practice that served to intensify the connection between tenant proprietors and the soil they cultivated. These arguments focused on a series of transformations in the nineteenth and the twentieth centuries to make sense of a new political concern with the normative significance of labor and property, and of the peculiar identification

of that politics as "Muslim" in the late colonial moment. The resulting account conceptualized late colonial Bengali agrarian politics as unintelligible outside the modern history of capital with which local dynamics of commercialization were becoming ever more inextricably entwined.[1]

When the realization of tenant proprietary rights in the soil was framed as the realization of "Muslim" freedom, though, the question of property was located not only within the colonial moment of its emergence, but also within a much longer history of debates within Islamic juristic discourses about property. The importance of this history is suggested powerfully by the centrality of the Khilafat agitation to the agrarian movement and of a leadership broadly endowed with varying degrees of madrassa education, as well as more generally by the way in which British colonial law identified Mughal practices, along with their (uneven) invocation of *fiqh* (Islamic jurisprudence), as a source of legitimacy at the foundation of its own legal apparatus.[2] Maulana Abdul Hamid Khan Bhashani, a prominent leader of Assam's Bengali settlers in the 1930s and 1940s who went on to become arguably the most important figure in East Pakistan's leftist dissent to Pakistani military rule, grounded his own espousal of secular rights on the ultimate authority of Islamic norms and injunctions. Bhashani had begun by elaborating a crypto-Lockean defense of immigrant property on the basis of the labor that settlers had mixed with the soil, and had then gone on to extend this into a critique of the exclusivity of private property from the standpoint of universal rights: "The ownership of all wealth belongs only to Allah. Man is merely its custodian. Therefore all the wealth of the state must be distributed proportionately on the basis of need, and private property must be abolished, in the name of Allah."[3] Drawing on his Deobandi training, throughout his career Bhashani invoked Islam as the foundation for justice, putting his influential political sermonizing squarely into a discursive space where *fiqh* could not be ignored. That discursive space was clearly an important framework of normative authority in Muslim Bengal. Yet we know so very little about how it became available as a discourse that agrarian activists could have come to find useful.

What makes the role of *fiqh* especially interesting in this context is the ways in which the conceptions of property that Islamic jurists had developed in the early modern period were themselves deeply shaped by the interaction between

1 Andrew Sartori, *Liberalism in Empire: An Alternative History* (Oakland, 2014).

2 Islamic law, Neil Baillie noted in 1853, "was not only the general law of the country, but was more especially that which determined the rights of the Government and the people to each other." Neil B. E. Baillie, *The Land Tax of India, According to the Moohummudan Law* (London, 1873), i.

3 Bhashani, "Rabubiyater Bhumika," cited from Sartori, *Liberalism in Empire*, 191.

processes of imperial state formation and commercialization. The history of Islam had long been bound up in—indeed, had arguably emerged out of—the dynamic Afro-Eurasian "hemispheric commercial nexus" whose most important crossroads were controlled by Muslims.[4] As a result, Islamic jurisprudence across an otherwise vast and heterogeneous space possessed not only a highly developed conceptual repertoire for debating competing claims to property, but a repertoire specifically adapted to negotiating the practical implications of precapitalist commercialization. It is little wonder, then, that *fiqh* could be seen in the Bengali agrarian context to provide a powerful set of resources for elaborating a discourse of Muslim freedom grounded in peasant property. Nevertheless, the specific relationships that early modern jurists had generally elaborated between agrarian property and the state did not unambiguously map onto claims of the kinds that agrarian actors were making in the context of agrarian commercialization and colonial law. In this essay, then, I want to draw on recent scholarship to outline a longer history of juristic conceptions of the relationship between Islam and property, in order to understand what kinds of conceptual resource a familiarity with *fiqh* might have provided agrarian actors in the late colonial moment. We know very little about the terms on which Islamic juristic discourse was available to Bengalis as a normatively powerful language, beyond the banal fact that a majority of Bengalis were Muslim. The aim here is not one of authoritative delineation, but rather to feel out a set of relationships that the existing historiography of South Asia has barely begun to think about. This essay is intended as an invitation to further investigation.

Through this lens, I also propose to think about the ways in which the kind of "modernist" account of agrarian politics that I have generally emphasized in my own work can nonetheless be grounded in varied regional and transregional histories of commercialization that extend backward much further in time. When *fiqh* mattered in the early twentieth century, it mattered in ways that built upon the presence of the problem of commerce already built into its conceptual repertoire; and when it did not fit, it was surely because the echo of the older processes of early modern commercialization did not quite address the new kinds of social relation that were becoming important in the age of capital.[5] The history of "Muslim freedom" in Bengal is thus a history that participates not only in a context defined by the moment of its articulation in the nineteenth and twentieth centuries, but

4 Marshall G. S. Hodgson, "The Role of Islam in World History," in Hodgson, *Rethinking World History: Essays on Europe, Islam, and World History* (Cambridge, 1993), 97–125; André Wink, "*Al-Hind*: India and Indonesia in the Islamic World-Economy, *c.*700–1800 A.D.," in P. J. Marshall, Robert van Niel, et al., *India and Indonesia during the Ancien Regime* (Leiden, 1989), 33–72.

5 This was also ultimately Hodgson's point in "Role of Islam in World History."

also in one defined by an earlier moment of transregional commercialization that echoes, without mirroring, that later moment.

THE ISLAMIZATION OF EASTERN BENGAL

There had long existed in Bengal, as Richard Eaton has explained, an old and powerful association between Islam and cultivation. The Bengali Muslim was a cultivator, and Islam was conceived of as a religion of agrarian civilization in the region. Muslims predominated in rural society in areas that had been reclaimed from jungle in the Mughal period, when the delta system on which the region's famous agricultural prosperity relied shifted eastward. Although the process of bringing these areas under cultivation by settled agriculturists was undertaken, to a great degree, with Hindu financing (positioning high-caste Hindus mostly at the upper ends of the chain of rights to land revenue), it was primarily Muslim pioneers who entered uncultivated areas and organized local populations of fisher-people and shifting cultivators living beyond the limits of either Hindu or Muslim social, political, and religious institutions into sedentary agricultural communities. These Muslim pioneers, drawn from the religious gentry of scholars (*ulama*) and holy men (*pir*), centered their authority on shrines and mosques, and came to be venerated as saints. It was through the institutionalization of their and their descendants' charisma and organizational capacities that newly sedentary populations, expanding from the new prosperity brought by wet rice cultivation, were integrated into Islam. Under these circumstances, Islam was in turn understood to be a religion of the ax and plough—that is, a religion whose association with the process of jungle reclamation and the formation of settled agricultural communities made it a civilization-building religion.[6]

Starting in the sixteenth century, an entrepreneurial Muslim pioneer would claim a portion of formerly uncultivated jungle wasteland and set about coordinating its clearance for settled agricultural purposes. These pioneering settlers might initially undertake such clearances after receiving a grant of land from the owner of its revenue rights—the zamindar—or after purchasing such rights. More commonly yet, they might simply take possession of jungle lands that were as yet unincorporated into any existing zamindari estate. But since such claims had no legal standing in relation to the imperial state, and the public treasury claimed primary proprietary rights over uncultivated lands, they would subsequently seek to have their rights formally recognized by the Mughal revenue authorities. If approved, these grants constituted heritable proprietary rights in the land in return for a commitment to maintain a mosque or shrine, to bring the

[6] Richard M. Eaton, *The Rise of Islam and the Bengal Frontier, 1204–1760* (Berkeley, 1993), 194–303.

land under cultivation, and to pledge support for the Mughal regime. In other words, the Mughal state was being called upon to acknowledge in law claims to proprietary right that were constituted most fundamentally within the domain of productive activity (reclamation), without circumventing the primacy of the sovereign's claim to be the source of rights to the land. It was thus at the level of land use, rather than at the level of Islamic law per se, that the connection was forged between Islam and cultivation in Bengal. Furthermore, it was first and foremost via the agency of a revenue-collecting gentry, rather than directly at the level of the cultivating peasantry, that this association operated.[7]

In what terms did this process implicitly frame the relationship between the pioneer–reclaimer and the Mughal state? For a specifically Muslim religious gentry—and furthermore, for a Muslim religious gentry that was engaged in projects of reclamation in an imperial context that during the reigns of Shah Jahan (1628–58) and Aurangzeb (1658–1707) was characterized by a deepening emphasis on the authority of Islamic law[8]—jurisprudence clearly provided one key source of normative claims relating to land and property. And indeed, Sunni jurisprudence was in the process of elaborating in this same period a sophisticated technical discourse about the construal of rights of property that foregrounded both the primacy of the sovereign's claim to uncultivated land and the derivation of legitimate property from the sovereign. At the same time, however, it also provided a framework for construing a right of property that could be framed in terms of a right to the soil grounded in productive investments. The process of reclamation and Islamicization that Eaton has described for the eastern Bengal delta in the early modern period is one that needs to be situated within a much wider set of normative coordinates articulated within the Islamic jurisprudence of the period.

FIQH IN THE ISLAMIC NEAR EAST

Of the four orthodox schools of Sunni jurisprudence, the Hanafis were preeminent, not only in the Ottoman Empire (where only Hanafis were appointed to positions in the Ottoman religious hierarchy), but also in the Mughal domains, including Muslim Bengal. Hanafi jurisprudence had initially emphasized the role of both cultivation and conquest in its account of property in land. Abu Yusuf (eighth century CE), one of Abu Hanifah's most authoritative students, had argued that property derived initially from the primordial right to possession acquired through the original reclamation and cultivation of *res nullius*. This was

7 Ibid., 248–57.

8 John F. Richards, *New Cambridge History of India*, vol. 1.5, *The Mughal Empire* (Cambridge, 1993), 119–50, 165–84.

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a conception seemingly grounded in the association of the right to possession with a right to subsistence, a conception shared by both Roman law and the *Manusmriti*. These primordial rights passed into law when conquering Muslim imams recognized their continued standing among the conquered, and then extended them through the allocation of uncultivated or abandoned land to Muslim followers. Abu Hanifah had stipulated that a claim to property after conquest was only legitimate if it was reclaimed from waste with the permission of the imam. Abu Yusuf had been less categorical as to whether the act of reclamation might continue to constitute proprietary claims even after conquest, regardless of the imam's authority, and whether the reclaimer was Muslim or *dhimmi* (protected non-Muslim subjects of a Muslim sovereign). Regardless, the individual who was in possession of the property was the presumptive owner of it, and that owner was obliged to cultivate the land and to pay a tax to the treasury—either the *'ushr* if they were Muslim, or the much higher (and thenceforth perpetually fixed, regardless of the religion of the owner) *kharaj* if they were not. Possession was taken as presumptive evidence of proprietorship, and the payment of tax on the land served as a confirmation of proprietorship.[9]

By the fifteenth century, however, in the context of Mamluk ascendancy in Egypt and of the development of new fiscal practices developed (outside the parameters of specifically Islamic legal sanction) by the Ottomans in southeastern Europe and western Anatolia, the basic parameters of Hanafi jurisprudential orthodoxy on the question of landownership were shifting. Ownership of all agricultural land, these later Hanafi scholars held, had entirely passed into the hands of the Mamluk and Ottoman treasuries through a cumulative succession of presumptive escheats over the course of the centuries since their original conquest. Following the fifteenth-century Mamluk jurists Ibn Humam and Ibn Qutlubugha, and the sixteenth-century Ottoman jurists Ibn Nujaym and Abu al-Su'ud Afandi, the defence of rights of property in the soil came to proceed from claims about how such rights had been legitimately acquired *from the sovereign*, rather than how they derived from primordial rights grounded in cultivation. This was, in some sense, already a part of the classical doctrine. It was because the imam had confirmed the rights of the cultivators following the conquest that they retained legal standing. Furthermore, the imam could grant rights of property in uncultivated land, or grant rights of property to some portion of the

9 Baber Johansen, *The Islamic Law on Land Tax and Rent: The Peasant's Loss of Property Rights as Interpreted in the Hanafite Legal Literature of the Mamluk and Ottoman Period* (Abingdon, 2017), 7–24; Kenneth Cuno, "Was the Land of Ottoman Syria Miri or Milk? An Examination of Juridical Differences within the Hanafi School," *Studia Islamica*, 81 (1995), 121–52; Ali Abd Al-Kader, "Land Property and Land Tenure in Islam," *Islamic Quarterly* 5/1 (1959), 4–11.

tax revenues due to the state. But in the postclassical doctrine being elaborated by Humam, Qutlubugha, Nujaym and Afandi, land was generally understood to be state-owned (*miri*), with the recognition of personal property (*milk*) being mostly confined to buildings, trees, walls, livestock, tools, and other direct results of individual labor and/or investment (typically centered on towns). Secondary rights to the land acquired by individual cultivators were generally based on the leasing of usufructuary rights to the land's productive powers. Cultivators were thus deemed to be paying *rent* rather than tax to the sovereign, or to the legitimate purchaser of the land's revenues, or to the religious or charitable trust created by such legitimate purchasers. This meant that such rental payments no longer implied a presumption of proprietorship over the land, as tax payments had in the classical doctrine. In the wake of the Ottoman conquest of Mamluk territories in the sixteenth century, this idea that cultivators were paying rent rather than tax could be further displaced by identifying the cultivator as the possessor of rights delegated by the sovereign, so that their right of possession correlated with a kind of state office—and one that could not be further devolved onto others by commercial or other means without direct authorization from above. These transformations in the understanding of land in orthodox Hanafi jurisprudence implied that it could no longer be inherited as property. Usufructuary rights could only be *transferred* between parties rather than inherited. This in turn released land from shariah injunctions concerning inheritance so that it could be passed directly from father to son.[10]

Over the course of the seventeenth and eighteenth centuries, there would be further significant (albeit never uncontested) developments in the jurisprudence of landed property. Rights over land would increasingly be justified not only by reference to the presumptive force of possession or the sovereign's universal proprietorship over land, but also by a general recourse to the grounding of such rights in the labor invested in the soil through the plough. This did not mean that the basic principles developed in Ottoman jurisprudence were reversed. Rather, the primacy of the sovereign as the source of rights in the land continued to be affirmed; but the capacity of a cultivating proprietor to develop rights in the land alongside their derivative rights as agents of the sovereign was also emphasized. The Palestinian scholar al-Ramli (himself strongly influenced by

[10] Martha Mundy and Richard Saumarez Smith, *Governing Property, Making the Modern State: Law, Administration and Production in Ottoman Syria* (London, 2007), 11–20; Johansen, *The Islamic Law on Land Tax and Rent*, 80–121; Cuno, "Was the Land of Ottoman Syria Miri or Milk?"; Martha Mundy, "Ownership or Office? A Debate in Islamic Hanafite Jurisprudence over the Nature of the Military 'Fief,' from the Mamluks to the Ottomans," in Alain Pottage and Martha Mundy, eds., *Law, Anthropology, and the Constitution of the Social: Making Persons and Things* (Cambridge, 2004), 142–65.

Shafi'i jurisprudence) argued that cultivators could acquire occupancy rights based on the investment of labor in the soil, and furthermore that such occupancy rights could develop into de facto property when land was planted with orchards, groves, and vineyards whose fruition was slow and which therefore implied an ongoing interest in the soil. A notion of property in land as *milk*, constituted practically within the domain of productive activity rather than out of rights delegated from the sovereign, thus came to exist in non-contradictory parallel with the notion of land as *miri*. Such a notion exceeded the limits of the administrative impulses and jurisprudential accommodations that appear to have shaped earlier approaches, but never to the degree that the proprietor's obligation to the treasury ceased to define the limits of proprietary rights. In the process, the right of possession based on cultivation, present in the earliest formulations of Hanafi jurisprudence, could sometimes be reasserted in terms of a property as a portion of the sovereign's rights not merely to the land's product, but to the land itself as a productive resource.[11] The degree to which cultivator ownership was being endorsed could be partly measured by the degree to which jurists struggled over whether the shariah laws of inheritance should override the conventional limitation of inheritance, in accordance with sovereign injunction and custom, to male heirs.[12] The kind of "proprietor" generally assumed in this discourse remained, however, the kind of proprietor whose right to revenue derived from a grant from the state, consistent with the more general assumptions of the discourse.

Already implicitly assumed in the jurisprudential debates of the sixteenth through eighteenth centuries was a domain of everyday commercial relations, "wherein cultivators exchanged their rights to lots and drew up contracts governing factors of production such as work in ploughing, weeding and harvesting."[13] Land was acquiring a new practical significance, beyond the limits of juristic judgment, as it became enmeshed in a complex skein of partly credit-fueled commercial agriculture on large revenue estates, and transfer through sale, rental, and pawn agreements and de facto inheritance, throughout which transactions it was treated de facto as property.[14] It would

[11] Cuno, "Was the Land of Ottoman Syria Miri or Milk?"; Mundy and Smith, *Governing Property*, 21–39; Sabrina Joseph, "An Analysis of Khayr al-Din al-Ramli's Fatawa on Peasant Land Tenure in Seventeenth-Century Palestine," *Arab Studies Journal* 6/2 (1998–99), 112–27.

[12] Mundy and Smith, *Governing Property*, 21–39; Kenneth M. Cuno, *The Pasha's Peasants: Land, Society, and Economy in Lower Egypt, 1740–1858* (Cambridge, 1992), 79–81.

[13] Mundy and Smith, *Governing Property*, 19.

[14] Cuno, *The Pasha's Peasants*, 48–84; Cuno, "Was the Land of Ottoman Syria Miri or Milk?"; Johansen, *The Islamic Law on Land Tax and Rent*; Joseph, "An Analysis of Khayr al-Din al-Ramli's Fatawa."

seem that Hanafi jurists were at least partly responding to a felt need to think through the theoretical implications of this transformation as it interfaced with the powerful administrative interventions that impacted the terms on which commercialization happened—even if it could not ultimately define those terms. There were, arguably, similar tendencies in the Maliki and Shafi'i schools, even though neither of those schools had ever conceded in the first place the principle of individual property implicit in the classical Hanafi understanding of *kharaj*. The eighteenth-century Shafi'i jurist Ahmad al-Suhaymi, for example, drew on the tradition of al-Nawawi to assert individual proprietary rights and to reject the "death-of-the-proprietors" narrative of Ottoman Hanafism.[15]

FIQH IN ISLAMIC INDIA

Unfortunately, we have no comparable scholarship on the history of jurisprudence in relation to land and property in the Mughal domains.[16] The Delhi Sultanate sponsored the cultivation of Islamic jurisprudence from the thirteenth century, with Shaikh 'Aalim bin 'Ala Indarpati compiling the encyclopedic *Fatawa Tatarkhaniya* under Firuz Shah Tughlaq in the later fourteenth century.[17] The Mughal treasury of Akbar's time appeared to have viewed revenue grants as a resumable alienation of its taxation rights—and, as such, neither transferable nor strictly speaking heritable. The *Ain-i-Akbari* attributed unqualified rights over waste to the sovereign and encouraged officials to assist subjects in bringing such waste under cultivation; but it also implied that existing cultivators retained a presumptive proprietary interest in soil under their cultivation (contingent on ongoing cultivation) alongside the claims of the state to a portion of their product as revenue.[18] But unsurprisingly, given the shared participation of India's *ulama* in the larger world of jurisprudential discourse, the general impulse of Hanafi interpretations in the Mamluk and

[15] Cuno, *The Pasha's Peasants*, 76–81; Cuno, "Was the Land of Ottoman Syria Miri or Milk?"; Al-Kader, "Land Property and Land Tenure," 4–11.

[16] For a discussion of the broader political status of Hanafi *fiqh* in the Mughal period see Alan M. Guenther, "Hanafi *Fiqh* in Mughal India: The *Fatawa-i Alamgiri*," in Richard M. Eaton, ed., *India's Islamic Tradition, 711–1750* (New Delhi, 2003), 209–30; and Zafarul Islam, *Socio-economic Dimensions of Fiqh Literature in Medieval India* (Lahore, 1990). The best discussion of the Islamic juristic tradition in relation to land and revenue in India remains (shockingly) Baillie, *The Land Tax of India*, which is made up of a long introductory essay by the author, and then translations of relevant passages relating to land revenue from the *Fatawa-i Alamgiri*.

[17] Islam, *Socio-economic Dimensions of Fiqh*, chap. 1.

[18] B. R. Grover, "The Nature of Land-Rights in Mughal India," *Indian Economic and Social History Review* 1/2 (1963), 1–23.

Ottoman Empires seems to have been extended to the Mughal domains from as early as the sixteenth century. One of the most important sixteenth-century jurists, Jalaluddin Thanesari, a Chishti Sufi, argued that in the wake of the Muslim conquest of India, the conquered had been disbursed without the land then being broadly distributed among the conquering armies: "The cultivators either died or fled and none of their heirs remained." Those who inhabited the land now were rather (at best) the descendants of those who had resettled in uncultivated lands after the conquest. Under such circumstances, "the lands do not enter into the private property of unbelievers according to Abu Hanifah," but rather become "dead land belonging to the treasury of the Muslims"—that is, they had passed into the possession of the public treasury by escheat. It followed that "if the imam gave some of these lands in the manner of private property to grantees, then the grantees revived it with his permission," so that "its substance [*raqabatuha*] enters into the private property of the person to whom it was given without debate." In other words, while agricultural land had become the property of the public treasury by escheat, grants of such land had the character of private property when duly acquired from the treasury. In contrast, following the opinion of Abu Hanifah rather than Abu Yusuf, "land that has been reclaimed from waste does not enter into the private property of the cultivator except if the imam explicitly permits it." In this respect, "land" (as *miri*) was "not like firewood and hunting," in which the mere act of bringing something into possession and use created a claim to *milk*.[19] Thanesari was defending a strong formulation of rights of property in revenue grants (including rights of alienation, transfer, mortgage, and inheritance) precisely by grounding such rights in their legitimate acquisition from the sovereign. The notion that rights over the land derived from the sovereign must have become more plausible and compelling as the Mughals distributed grants over uncultivated wastelands and (though never as aggressive on this score as the Ottomans) gradually transformed tributary subordinates into quasi-officials in the imperial revenue administration.[20] The eighteenth-century jurist Qazi Muhammad A'la Thanwi built on many of Thanesari's arguments, not

[19] Jalal ibn Mahmud Thanesari, *Risalat tahaqquq aradi Hind* (A Treatise on the Tenure of Crown Lands in India) (Delhi, 1886), 3, 11, 12. The term *raqaba* literally refers to the "neck"—and then by analogy to the right over the life of a slave, rather than merely the right over the slave's service. *Raqabat* thereby comes to mean proprietorship. In the passage quoted, I translate *raqaba* as "substance," in implicit contrast to *manfa'a* (in this context: usufruct): see Mundy, "Ownership or Office," 152–3; and Edward William Lane, *An Arabic–English Lexicon* (London, 1863), book 1, 1133. More generally see also Islam, *Socio-economic Dimensions of Fiqh*, chap. 5; Abdul Azim Islahi, "Kharaj and Land Proprietary Right in the Sixteenth Century: An Example of Law and Economics," *Journal of Objective Studies* 19/1–2 (2008), 29–44.

[20] Richards, *New Cambridge History of India*, 79–93, 185–204.

with a view to defending the rights of revenue grant holders, but rather to insist on the continued primacy of the treasury's claims over the soil. He argued that the high levels of revenue demanded from zamindars and their tenants exceeded the legitimate limits of *kharaj* and were therefore better conceived in terms of rent paid to the sovereign. Neither could rightfully stake any legitimate claim to proprietorship over the land.[21]

The ambiguities evident in the seventeenth- and eighteenth-century interpretations in the Ottoman world also seemed to be present in India at the same time. According to the *Fatawa-i-Alamgiri*, the major digest of Hanafi jurisprudence sponsored by Aurangzeb (marking the ascendance of India's *ulama* to political prominence in the Mughal state), when land is abandoned by its *kharaj*-paying proprietors, or when they die without successors, the land passes to the public treasury. But there is no implication that this is to be understood as the presumptive state of the lands of the Mughal domains.[22] It also recognized rights of ownership in anyone who brought wasteland into cultivation, whether Muslim or *dhimmi* (among whom, in India, Hindus were typically counted), and even left open, in principle, the question whether such reclamation could properly constitute a claim to property, even if the reclamation was undertaken without permission of the sovereign.[23] Aurangzeb's 1688 *farman* also placed a clear premium on encouraging revenue officials to "endeavour ... to labor towards the increase of agriculture, so that no lands may be neglected that are capable of cultivation." This implied both efforts to bring wasteland into cultivation and the outright coercion of husbandmen who neglected cultivation.[24] It is clear that arguments of these kinds were variously endorsing and contesting a world of everyday practical transactions in different regions that, as in parts of the Ottoman world, seemed to imply de facto property rights variously on the part of revenue grant holders like zamindars and *taluqdars* and their rent-paying, cultivating tenants (*raiyats*)—rights that could extend to inheritance, alienation, and mortgage. It is also clear that, as in the Ottoman lands, the development of new conceptions of property was occurring in relation to the domain of land use, and not merely in relation to the question of the ultimate authority over the disposition of the land's revenues. There seems little reason to doubt that these transformations in Mughal India were occurring within a context of rapid commercialization and monetization shared with, and connected to, the Ottoman world. And nowhere were these commercial forces, or the

21 Irfan Habib, *The Agrarian System of Mughal India, 1556–1707* (New Delhi, 1999), 123–4; Islam, *Socio-economic Dimensions of Fiqh*, chap. 6.

22 See Baillie, *The Land Tax of India*, 16.

23 Ibid., 42.

24 Ibid., 72–5.

jurisprudential ambiguities that accompanied them, more in evidence than in the processes of reclamation, sedentarization, and Islamicization in eastern Bengal described by Eaton.

THE FARAIZI MOVEMENT

The association of sedentary agriculture, commercial expansion, and Islam was built into the very foundations of the emergence of eastern Bengal's agrarian society. But a closer look at the complex of juristic ideas and social hierarchies at work in early modern Bengal make it clear that an association between Islam and a commodity-producing smallholding peasantry was far from central to that older development. The first intimation of such an association seems to be in the Islamic reformist movements of the nineteenth century. Initiated by Haji Shariatullah after he returned in 1818 from nearly two decades of religious education in Mecca, the Faraizi movement swept through the eastern delta of Bengal starting in the 1820s and 1830s. Faraizism was a Hanafi-identified Islamic reformist movement that emphasized strict observance of religious obligations, including the rigorous maintenance of an austere monotheism. Especially after the succession of Shariatullah's son, Dudu Miyan, to the leadership in 1840, its broad popularity among the Muslim peasantry of eastern Bengal appears to have in part hung on its strong embrace of a powerful association between Islam and the plough. The Faraizi slogan *langal jar, jami tar* ("the land belongs to the tiller") implied that bringing land under cultivation constituted the basis for a claim to its ongoing possession, or even to property in it. This idea was, as we have seen, hardly peculiar to the nineteenth century or exclusive to Muslim Bengal. But it was nonetheless a claim whose appeal to religious authority was unlikely to have found much of a foundation in the currents of Hanafi jurisprudence that had been elaborated in the period from the sixteenth through eighteenth centuries when Muslim agrarian society was emerging in the eastern delta. In that process, those best positioned to claim property on the basis of historical investments in reclamation and improvement were gentry lineages claiming descent from the *pir* (or saint) who had initiated the sedentarization and Islamicization of the area. The actual rent-paying, cultivating tenants had little grounds in Muslim law for any comparable claim. There was limited precedent in postclassical Hanafi jurisprudence for framing a claim based on either improvement or labor outside, or prior to, recognition and permission from the sovereign. The only plausible way that such a claim could be construed on behalf of the rent-paying, cultivating tenant was by derivation from the superior claim of the grant-holding gentry. Such an inferior claim was not a claim to property, but a claim to tenancy. To suggest otherwise implied an act of lèse-majesté quite alien to the terms of postclassical Hanafi *fiqh*.

The Faraizi invocation of the slogan "the land belongs to the tiller" stood in considerable tension with these older associations between Islam and cultivation that had developed in conjunction with practices of land use and revenue collection in early modern Bengal. That slogan could easily be taken to suggest that the hierarchy of claims to the land organized around the historical status of the founder saint was somehow to be *bypassed* in the name of the possessory rights of the cultivator: "it is a favorite maxim with [the Faraizis], that Earth is God's, who gives it to his people—the land tax is accordingly held in abomination, and they are taught to look forward to the happy time, when it will be abolished."[25] This tension is only reinforced when we recognize that the practices specifically associated with saint veneration in the Bengali countryside—that is, the Islam of the shrines and tombs of pioneer founders typically maintained by gentry lineages claiming descent from them—were a primary focus of Faraizi reformist disapproval. Like other contemporary reformists, including the Wahabbis and Waliullahis by whom Shariatullah had clearly been influenced, Faraizis theologically embraced a broad commitment to the purging of unauthorized historical innovations (*bidat*) that were central to popular religious practices. They understood saint veneration to be a prime example of the corruption of Islam resulting from contact with Hinduism in Bengal.[26] In the Bengali agrarian context, this critique could assume charged significance for agrarian producers.

In the shifting landscape of the eastern delta, the primarily Muslim cultivators battled landlords and European indigo planters for control of an expanding frontier of prime agricultural land. In this environment, property rights were at best vaguely defined, whether in terms of their spatial reference or in terms of the relative standing of rival entitlements. It seems clear, however, that the contest between planters and cultivators was as much one between commercial agriculture and commercial agriculture as one between commercial agriculture and subsistence agriculture. It is difficult to say with any certainty what the specific content of the Faraizi identification with agrarian interests was: Faraizi texts tell us much about their interpretations of religious obligation and practice, but we can only reconstruct the logic of Faraizism's agrarian politics from scattered evidence available in the colonial archive. Nonetheless, by attacking saint veneration along with the levies that zamindars (mostly, but not exclusively, Hindu) periodically demanded from their tenants to finance ceremonies and festivals that were either overtly Hindu or that Faraizis identified as un-Islamic, Faraizis did appear

[25] Cited from Andrew Sartori, *Bengal in Global Concept History: Culturalism in the Age of Capital* (Chicago, 2008), 206.

[26] Muin-ud-din Ahmad Khan, *History of the Fara'idi Movement in Bengal (1818–1906)* (Karachi, 1965).

to be identifying Islam with the agrarian interests of rent-paying, cultivating tenants rather than with the narrower and more conventional claims of the rural Muslim gentry.[27] From this perspective, Faraizis were seizing on the theological impulses of their movement to deepen the association of Islam with cultivation, to cement that association at the level of productive activity rather than within the juridical realm, and to intensify the centrality of proprietary entitlements within that association. In all these ways they were drawing on long-established themes in the history of Hanafi jurisprudence, and a deep history of connection between processes of reclamation and sedentarization in the eastern delta and its Islamicization. Yet Faraizis did all this in a way that repudiated much of the juristic tradition and normative hierarchies out of which those associations had been built in the first place, by shifting the locus of the association between Islam and cultivation from the landholding gentry to the cultivators.

As things stand, we do not really know much at all about how agrarian political actors of the nineteenth or the twentieth century negotiated the terms of *fiqh* when they framed normative principles capable of arbitrating between competing demands to access and control of environmental resources. It seems to me that it would be very useful to have such a history for several reasons. First, examining histories of these kinds might allow us to locate regional histories within older histories of connection that reached deeply into agrarian localities. Second, it might allow us to look at how agrarian actors were able to make sense of shifting historical opportunities and constraints with a highly flexible, but nonetheless extraordinarily sophisticated and technical, juristic discourse of rights, obligations, and justice. Third, and conversely, it might open up a perspective on the limitations of preexisting juristic frameworks of interpretation, and thus a way to identify new horizons of experience and the emergence of new norms along with them. In that sense, the connected histories that this paper takes as its point of departure form a point of comparison for the analysis of the historical specificity of the forms of twentieth-century agrarian politics with which this essay began. These were forms of politics that drew from the history of *fiqh*, and spoke the language of *fiqh*, yet belonged unambiguously to the ideological landscape of a much broader twentieth-century world of political aspiration. Finally, then, such histories could open rich new veins of comparison between agrarian regions widely separated geographically, but commonly engaged with the normative discourse of *fiqh*.

[27] See especially Iftekhar Iqbal, *The Bengal Delta: Ecology, State and Social Change, 1840–1943* (Basingstoke, 2010), 67–92.

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