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Divya Cherian *

Law and Early Modern Empire: The View from Mughal India

* Princeton University, dcherian@princeton.edu

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Divya Cherian

Law and Early Modern Empire: The View from Mughal India*

Negotiating Mughal Law is a methodologically innovative book that is a major intervention in the fields of early modern South Asian history, early modern legal history and Islamic law, and the history of the family. The book studies the idea and practice of law in Mughal and post-Mughal South Asia and makes a case for the emergence, in the course of the 17th century, of a »Mughal law«. By tracing the journey of legal forms and practices over three centuries in the region of Malwa in central India, which witnessed the rule of three different empires – the Mughals, the Marathas, and the British – Chatterjee makes a case for law as a vehicle of cosmopolitanism. This is an exciting proposition for a field that so far has largely focused on ›culture‹ – literature, music, dress – as the primary site for the study of early modern cosmopolitanism and the articulation and practice of being Persianate. So, was there a Mughal law and if yes, what was it? First, Chatterjee calls for a move away from imagining an »autonomous body of rules and procedures« and instead articulates a conception of law as a spectrum that extended from state policy to formal academic jurisprudence to more quotidian manuals and ordinary users (20). Chatterjee argues for an approach that does not limit law to institutions, rules, and norms alone. In doing so she builds on approaches to legal history, by now deeply rooted in historical scholarship, that emphasize the interplay between law and society and that see law as an arena of contest.¹ In this conception of law, ordinary folk and ›low-brow‹ specialists could and did shape legal change. The book builds upon Farhat Hasan's study of the Mughal state in the port cities of Surat and Cambay in the 17th century, which highlights the role of local society in shaping the Mughal state and adjudication of legal matters on the ground.² Chatterjee's intervention is distinguished by its

reflexivity in both method and thought and by the broad and lush canvas that she paints from the vantage point of a single household.

Second, Chatterjee argues, law in Mughal India was not an eclectic mish-mash of different sources of law such as imperial grace, Islamic law, state law, *dharmashastric* (»Hindu«) law, and custom (*dastur, urf*), each with its own authorized experts and conceived of by subjects as distinct. Instead, a Mughal subject operated within an understanding of a systematic body of rules which varied based on regional and social location (39–40, 189). All of these different sources came together into a specific mix for each subject that varied by social and geographic place and over time. Chatterjee presents a picture of Mughal law in which there was no conscious awareness among subjects of multiple sources of law or of multiple legal orders. She notes, »There is no indication that they saw themselves as engaging with an eclectic system – Islamic law in parts and not in others – it appears that they saw it all as ›law« (40). This is a strong counterpoint to arguments for early modern legal pluralism – that is, for the coexistence of two or more legal orders in a single territory or community without a coordinating authority or a hierarchical relation between the legal orders. For Chatterjee, a range of sources – »royal and sub-royal orders, administrative conventions and rules, Islamic jurisprudence and local custom« (39–40) – informed the rules that constituted law in Mughal India. And through pre-colonial records this argument counters the persistent colonial representation of a »traditional« gulf between »Islamic law« and *dharmashastric* or »Hindu« law. It is also important for making clear that in the directly administered provinces of the Mughal Empire, as Farhat Hasan has also shown, »Hindu« subjects did not designate ›personal‹ areas such as inheritance and marriage as

* NANDINI CHATTERJEE, *Negotiating Mughal Law: A Family of Landlords Across Three Indian Empires*, New York: Cambridge University Press 2020, 298 p., ISBN 978-1-108-62339-1

1 For some influential articulations of this approach, see E. P. THOMPSON, *Whigs and Hunters: The Origins of the Black Act*, New York 1975, 258–269; and HENDRIK HARTOG, *Pigs and Positivism*, in: *Wisconsin*

Law Review (1985) 899–935, here 930.

2 FARHAT HASAN, *State and Locality in Mughal India: Power Relations in Western India, c. 1572–1730*, Cambridge 2004.

subject only to *dharmashastric* law or customary usage and as being beyond the purview of the Mughal state or the *qazi's* (judge's) office. This adds to the scholarship of Sumit Guha, Indrani Chatterjee, and Ramya Sreenivasan, which has demonstrated the interlinkages between family, household, and state in early modern South Asia.

Chatterjee further elaborates her picture of Mughal law with the contention that ›law‹ in Mughal India derived from a sense of ›right‹ – in both senses of the term (that is, as an entitlement as well as ›what should be‹). This sense of ›right‹ could vary and was derived from protagonists' own perspectives. The term in Mughal discourse that named this concept of rights and rightness, Chatterjee argues, was ›*dastur*‹, which according to her was ›the Mughal name for Islamicate law‹ (236), though elsewhere in the book she also evokes it as an approximation of ›custom‹. By going far beyond telling us what Mughal law was not and by making this novel argument about law and legal culture in Mughal India, the book offers an exciting new historiographical intervention on pre-colonial South Asian law. In doing so, Chatterjee opens up a space for further exploration and debate.

Third, Chatterjee traces a field of legal power playing out between three points, each of which was a source of legal authority: royal grace; locally rooted, land-based power (the *zamindars*); and jurisprudential authority (scholars of Islamic law). *Zamindar* literally means ›landholder‹, and in Mughal administration, the term designated armed households in the countryside whose male members could hold state ranks and offices – such as local revenue collector (*chaudhri*), revenue record keeper (*qanungo*), and tax farmer (*ijaradar*) – in the Mughal administrative hierarchy. The *zamindar* family whose documents form the archive of this book was one of limited and local eminence, based in the town of Dhar in Malwa, a region that today forms part of the Indian state of Madhya Pradesh. They were descendants of a certain Mohan Das and over the centuries held each of the designations in local administration that I listed above. For this reason, documents recording their negotiations and re-negotiations over rights and entitlements with Mughal princes, nobles, and their regional representatives are an important body of sources for exploring the operation and formation of state power on the ground. These documents consist of state functionaries' orders, tax collection

contracts, legal deeds, and declarations authorized by the local *qazi*. Through this exploration, Chatterjee shows the power wielded by landlordly operatives like the Das family, which was rooted not only in ›primordial‹ rights in land but also in their active and ongoing participation in revenue collection.

Islamic Law in Hindustan

Chatterjee calls on us to abandon a vision of a Mughal legal archive that derives, she argues, from the Ottoman context, one in which *qazis* copied out their rulings in running registers called *sijills*. Instead, she argues that in most parts of the Islamic world, including Mughal India, *qazis* did not ›find it necessary to create and maintain registers, whether recording the adjudication of disputes or the activities of many other branches of government‹. She goes on to speculate that the onus may have been on Mughal subjects – the recipients of legal decisions or transfers of rights – to maintain records of entitlements, transactions, and judgments (33). What seems to be at stake here is whether Islamic societies, and the practice of law within them, were marked by a consistent and generalized adherence by *qazis*, with or without state involvement, to a practice of maintaining a running record of their decisions and authorizations. Taken further, what may be at stake here – and what Chatterjee challenges – is the investment in finding recognizably ›Islamic‹ legal orders whose key elements date back to the first few centuries of Islam. The book is then not only about Mughal law but also a study of Islamic law.

The book is original in that it builds a bridge between the study of Islamic law in South Asia and histories of state, society, and politics. Chatterjee asserts that deviations in practice from an idealized Islamic legal practice in ›Islamicate‹ societies need not be explained or justified. Instead, she embraces Chibli Mallat's argument for the recognition of the multilayered nature of the sources of Islamic law and advocates for the scholarly situation of the legal practices of the Mughal Empire squarely within the history of Islamic law. She also sets out to overcome the neglect of sources in Persian and other South Asian languages for the study of Islamic law. By placing her findings in deep conversation with both Mughal and South Asian history on the one hand and the history of Islamic

law on the other, Chatterjee has not only covered new historiographical ground, but she has also opened up a whole new field for further exploration and reflection in a way that breaches the ›borders‹ of Islamic law.

Reconstituting Archives

Chatterjee opens up a new way forward by making clear that the absence of a single, codified, top-down body of legal records in the Mughal Empire (and therefore the inability to refer to it) is not a shortcoming that legal historians must overcome. Mughal law can be found in fragments and in scattered collections. The book re-orientes Mughal historians' vision to argue that the archives, plural, of the Mughal state were de-centralized and may be found in households of descendants of Mughal-era notables. By turning the gaze from the locality towards the Mughal court through these regional and localized documents (rather than taking the more usual court-to-provinces perspective), it is possible to arrive at a picture of law, legal culture, and legal practice in the Mughal Empire.

Today, the archive that Chatterjee knits together for this book lies scattered across three sites: New Delhi and Dhar (near Mandu in the Malwa region of today's Madhya Pradesh) in India as well as Kuwait. It is an archive of striving, in which the norms of the Mughal state, such as the separation of powers among offices on the ground, are maintained even as they do not impede the acquisition of power, wealth, and status by the landlord family at hand. Chatterjee is attentive to the processes of self-representation and curation that generated the records she studies and the archive she re-assembles: there is a degree of intentionality in the preservation and survival of the documents that are available today and the absence of others. She is mindful of the losses (of language, of authority, of the political orders in which the documents functioned), the dispersal through transactions and donations of many of the documents studied,

and the re-organization along new logics in new collections. This aspect of Chatterjee's history can be read in conjunction with Manan Ahmed Asif's reflections on colonial dismemberings, erasures, selections, and reaggregations wrought upon South Asian documentary materials by the creation of colonial archives for the writing of ›modern‹ histories of India.³ It can also be read alongside Mana Kia's evocation of communities of belonging woven around Persianate ethics, which too were disrupted by colonial and modern allocations of ethnicity and nation.⁴ Where Asif and Kia trace the connections drawn within Persian-language histories and literary compendia to represent these pre-modern circuits of belonging, Chatterjee works to draw together all the documents of administration and law she can find pertaining to a single family. Chatterjee's account (in the book's Epilogue) of precisely how she came to remake this archive – through serendipity, training, and vision – is thrilling to read.

On the strength of this book, Chatterjee first makes a case for a turn towards household archives that lie in plain sight across South Asia and for re-orienting our imagination of the process of record-keeping in Mughal India away from the center and towards the families that formed the state on the ground. Second, she argues for careful attention to the material, visual, generic, formal, linguistic, and formulaic qualities of archival documents in order to source-critically contextualize and analyze them (an elucidation of this innovative method can be found most fully in Chapter 4 of the book). Third, and most centrally, she makes an argument for the reaggregation of other dispersed archives and for deploying tools of digital history such as statistical analysis to fully discern the patterns and divergences that emerge within them. She concludes the book with an Epilogue that is a manifesto for ›reconstructing multiple archives and working towards narrative coherence within each‹ (43) – a process she terms the ›reconstitution of an archive‹ (226, 235). She suggests that by uniting all the documents, reading them closely, and arranging them chronologically and in relation to each other,

3 MANAN AHMED ASIF, *The Loss of Hindustan: The Invention of India*, Cambridge/MA 2020.

4 MANA KIA, *Persianate Selves: Memories of Place and Origin before Nationalism*, Stanford/CA 2020.

it is possible to approach an understanding of the legal order as a whole as well as of its parts. This is an exciting proposition and one that raises questions: is it a re-making or a making (anew) of an archive? Does »archival reconstruction« (232) suggest a pre-existing, stable archive whose lost integrity can be restored by today's historians? Chatterjee's methodological call invites further reflection on the category ›archive‹, its meaning in early-modern South Asia/Mughal India, and shifts in the conception, uses, and logics of archiving in the colonial era. It also raises further methodological, affective, and ethical questions about working with families whose ancestors are the subjects of research.

Other Interventions

Chatterjee makes a number of other interlinked interventions in Mughal history and its methods that deserve mention: Chapters 2 and 3 revisit the very foundations of Mughal historiography, explaining genres and types of court and legal documents. *Zamindari*, *mansabdari*, *ijara*, tax collection: Chatterjee adds nuance to our understanding of each of these key institutions of the Mughal Empire to make clear the constant renewal and renegotiation they entailed, which in turn made room for the agency and enterprise of figures like the

kayasth (scribal-caste) landlords that are her focus. Written documents were of immense significance in holding on to *zamindari* entitlements and to state offices that could be complementary to landholding. The elbowing out of rival claimants – including in this case agnatic kin and a Muslim branch of the Das family – that household memory and later narratives have erased are made visible in Chatterjee's account.

Negotiating Mughal Law is a welcome contribution to the study of law and early modern empire, offering a pre-colonial perspective to a field that is dominated by a focus on European colonial expansion. The book lays out the contours of a history of law for one of the most significant empires in world history, the Mughals. It crosses established fields and opens up new spaces within existing ones while also breaking new ground methodologically. Chatterjee has a clear and ebullient voice, and her writing manages to be both accessible and technical. Given its expansive interpretation of law, it has forged a path forward to bring the legal history of South Asia into conversation with studies of the region's economy, society, politics, and culture. It is an excellent work, one that will fuel new conversations for decades to come and which can enable comparative discussions within and beyond early modern South Asia. ■

Matilde Cazzola

Philanthropy to the Fore*

The global health crisis of the Covid-19 pandemic has recently reminded us of the prominent public role played by philanthropic individuals and foundations in providing emergency assistance and compensating for the shortcomings of the state in the face of complex challenges. However, the history of modern philanthropy in Western

Europe, and more specifically Britain, dates back at least two hundred and fifty years and, as shown by the social historian Hugh Cunningham in his latest book *The Reputation of Philanthropy since 1750: Britain and Beyond*, it has been characterised by major transitions. Starting from the observation that philanthropic activities have attracted both

* HUGH CUNNINGHAM, *The Reputation of Philanthropy since 1750: Britain and Beyond*, Manchester: Manchester University Press 2020, VIII + 218 p., ISBN 978-1-5261-4638-0